TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1957

No. 91

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, A CORPORATION, PETITIONER,

vs.

STATE OF ALABAMA, EX REL. JOHN PATTERSON, ATTORNEY GENERAL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ALABAMA

PETITION FOR CERTIORARI FILED MARCH 28, 1957
CERTIORARI GRANTED MAY 27, 1957

SUPREME COURT OF THE UNITED STATES

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[fol. 1]

IN THE SUPREME COURT OF ALABAMA
THIRD DIVISION

No. .....

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, a corporation, Petitioner

IN RE: NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, Petitioner-Respondent

v.

STATE OF ALABAMA ON THE RELATION OF JOHN PATTERSON, Attorney General of the State of Alabama, Respondent-Complainant

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PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT OF ALABAMA, MONTGOMERY COUNTY, ALABAMA, IN EQUITY

To the Honorable Chief Justice and Associate Justices of the Supreme Court of Alabama

Comes the petitioner-respondent and respectfully petitions this Honorable Court to review and determine the judgments and orders adjudging petitioner in contempt and fixing punishment against petitioner therefor in the sums of $10,000 and $100,000 rendered by the Circuit Court of the 15th Judicial Circuit of Alabama, Montgomery County, Alabama, in Equity, on July 25, 1956, and on July 31, 1956, in a cause styled No. 30468, State of Alabama on the relation of John Patterson, Attorney General of the State of Alabama, complainant against the National Association for the Advancement of Colored People, a corporation, respondent.

Petitioner avers that the state, on June 1, 1956, filed a complaint in the court below alleging: (1) That petitioner, a New York corporation, maintains its Southeast Regional office in Birmingham, Alabama; (2) that petitioner has employed agents to operate this office; (3) that local chapters of petitioner are organized in the State of Alabama;

(4) that membership dues and contributions for said chapters and petitioner are solicited; (5) that petitioner has [fol. 2] paid monies to Autherine Lucy and Polly Myers Hudson to aid them to enroll as students at the University of Alabama to test its policy of denying entrance to Negroes; (6) that petitioner has furnished legal counsel to represent Autherine Lucy in her proceedings against the University of Alabama; (7) that petitioner has supported and financed an illegal boycott to compel the Capitol Motor Lines of Montgomery, Alabama, to seat passengers without reference to race; (8) that petitioner's officers, agents and members have for years past and are presently engaged in organizing chapters in the State of Alabama, in collecting dues therefor, soliciting contributions and expending monies in advancing the aims of petitioner; (9) that petitioner has never filed with the Secretary of State a certified copy of its Articles of Incorporation and other information required by Title 10, Sections 192, 193 and 194 of the Code of Alabama, 1940; (10) that petitioner has been and continues to do business in the State of Alabama and in the County of Montgomery in violation of Article 12, Section 232, Constitution of Alabama, 1901, and Section 194, Title 10, Code of Alabama, 1940; (11) that petitioner is continuing to do business within the state without first having complied with the aforesaid constitutional and statutory provisions and is thereby causing irreparable injury to the property and civil rights of the citizens of Alabama for which criminal prosecution and civil action at law afford no adequate relief.

The state prayed for a temporary injunction enjoining and restraining petitioner, its agents and members from further conducting its business within the state and organizing chapters and maintaining offices within the state, it requested dissolution of all existing chapters of the organization and that upon final hearing the court issue a permanent injunction embodying the foregoing and oust petitioner from the state.

On June 1, 1956, the day this bill was filed without notice or opportunity for hearing, the court below issued a temporary restraining order and injunction. The aforesaid order and judgment is appended hereto as Exhibit No. I to this

petition and made a part thereof. It restrained petitioner, its agents, all parties in active concert with petitioner, and all persons having notice of the court's order from conducting any further business of any description or kind within the state; from further organizing chapters within the state; from maintaining offices within the state; from soliciting members, contributions or collecting memberships for petitioner or any local chapters or wholly controlled subsidiaries in the State of Alabama. The court [fol. 3] further enjoined petitioner—although the state's bill did not request it—from filing with the Department of Revenue and the Secretary of State of Alabama any document to qualify to do business within the state.

Petitioner avers that this order and judgment is null and void and beyond the jurisdiction of the court below in that the court seeks to exert authority not in keeping with the decisions of this Court and which invades petitioner's right under Article I, Section 8 and the Fourteenth Amendment to the Constitution of the United States.

On July 2, 1956, petitioner filed a motion to dissolve the temporary restraining order and injunction and demurrers to the bill. Hearing thereon was set for July 17, 1956.

On July 5, 1956, the state filed a motion to require petitioner to produce certain books, documents and papers, as set out below, alleging the examination thereof was essential to its preparation for trial:

> 1. Copies of all charters of branches or chapters of the National Association for the Advancement of Colored People in the State of Alabama.
>
> 2. All lists, documents, books, and papers showing the names, addresses and dues paid of all present members in the State of Alabama of the National Association for the Advancement of Colored People, Inc.
>
> 3. All lists, documents, books and papers showing the names, and addresses of all contributors in the State of Alabama who have contributed money, goods, services or anything of value, to the National Association for the Advancement of Colored People, Inc., within the last twelve months next preceding the date of filing the petition for injunction in this case.

4. All lists, documents, books, and papers showing the names, addresses and official position in respondent corporation of all persons in the State of Alabama authorized to solicit memberships in and contributions to the National Association for the Advancement of Colored People, Inc.

5. All files, letters, copies of letters, telegrams and other correspondence, dated or occurring within the last twelve months next preceding the date of filing the petition for injunction, pertaining to or between the National Association for the Advancement of Colored People, Inc., and persons, corporations, associations, groups, chapters and partnerships within the State of Alabama.

6. All deeds, bills of sale and any written evidence of ownership of real or personal property by the National Association for the Advancement of Colored People, Inc., in the State of Alabama.

7. All cancelled checks, bank statements, books, payrolls, and copies of leases and agreements, dated or occurring within the last twelve months next preceding the date of filing the petition for injunction, pertaining to transactions between the National Association for the Advancement of Colored People, Inc., and persons, chapters, groups, associations, corporations and partnerships in the State of Alabama.

8. All papers, books, letters, copies of letters, documents, agreements, correspondence and other memoranda pertaining to or between the National Association for the Advancement of Colored People, Inc., and Autherine Lucy, Autherine Lucy Foster and Polly Myers Hudson.

[fol. 4] 9. All papers, books, letters, copies of letters, documents, agreements, correspondence and other memoranda pertaining to or between the National Association for the Advancement of Colored People Legal Defense and Educational Fund and Artherine Lucy, Arthurine Lucy Foster and Polly Myers Hudson.

10. All papers, books, letters, copies of letters, documents, agreements, correspondence and other memoranda pertaining to or between the National Association for the Advancement of Colored People, Inc., and the Montgomery Improvement Association.

11. All lists, books and papers showing the names and addresses of all officers, agents, servants and employees in the State of Alabama of the National Association for the Advancement of Colored People, Inc.

12. All lists, books and papers showing the names and addresses of all officers, agents, servants and employees of the various chapters of the National Association for the Advancement of Colored People, Inc., in the State of Alabama.

13. All papers, books, files, documents, letters, copies of letters and correspondence, cancelled checks, bank statements, leases, contracts and agreements in the Southeastern Regional Office of the National Association for the Advancement of Colored People, Inc., in Birmingham, Alabama, or in possession of any officer, agent, servant or employee of said corporation in the State of Alabama.

14. All papers, books, letters, copies of letters, files, documents, agreements, correspondence and other memoranda pertaining to or between the National Association for the Advancement of Colored People, Inc., and Aurelia S. Browder, Susie McDonald, Claudette Colvin, Q. P. Colvin, Mary Louise Smith and Frank Smith, or their attorneys, Fred D. Gray and Charles D. Langford.

15. All papers, books, letters, copies of letters, files, documents, agreements, correspondence, cancelled checks, bank statements, financial statements and all other memoranda, dated or occurring within the last twelve months next preceding the date of the filing of petition for injunction in this case, concerning all transactions and activities within the State of Alabama of the National Association for the Advancement of Colored People, Inc.

This motion was set down for hearing on July 9, 1956. On July 11, 1956, after hearing argument by the state and petitioner in which the petitioner raised objections to the motion on grounds supported by basic principles of equity jurisprudence, by decisions of this Court and by the Constitution of the United States, the court overruled the objections and issued an interlocutory order and decree requiring the petitioner to produce certain of the documents as requested in the motion. The order of the court is appended hereto as Exhibit II and made a part of this petition.

Petitioner avers that the aforesaid order is null and void and outside the jurisdiction of the court below under basic principles of equity jurisprudence, the decisions of this Court and the Constitution and laws of the United States, namely, the Fourteenth Amendment, Article I, Section 8 of the Constitution of the United States and Title 42, United States Code, Section 1981.

Petitioner was ordered to produce the documents as indi- [fol. 5] cated in the order as of July 16, 1956. Thereafter, the court extended the time to produce until July 24, 1956; it simultaneously postponed until July 25, 1956, hearing on the demurrers and motion to dissolve.

On July 23, petitioner filed its answer, admitting: (1) That it was a New York corporation; (2) that it maintained its Southeast Regional Office in Birmingham; (3) that it hired and employed agents to operate this office; but (4) denied that it had organized local chapters in the state and that agents of the corporation solicited for said local chapters and the parent corporation; denied (5) that it had employed or paid money to Autherine Lucy and Polly Myers Hudson to encourage or aid them in enrolling in the University of Alabama; admitted (6) furnishing legal counsel to assist Autherine Lucy in prosecuting her suit against the University of Alabama; admitted (7) that it had given moral and financial support to Negro residents of Montgomery in connection with their refusal to use the public transportation system of Montgomery and had furnished legal counsel to assist Rev. M. L. King and other Negroes indicted in connection with that matter, but denied all other allegations and inferences contained in that alle-

gation and bill of complaint; and denied (8) that its officers, agents or employe's have engaged in organizing chapters for the Corporation in Alabama and Montgomery County, collecting dues, soliciting memberships, loaning or giving personal property to aid present aims of the Corporation; admitted (9) that it had never filed with the Secretary of State Articles of Incorporation or designated a place of business or authorized agents within the State; but denied (10) that it was required by Sections 192, 193 and 194 of Title 10, Code of Alabama to do so. Petitioner denied that it has violated Article 12, Section 232, Constitution of Alabama, 1901 and Section 192, 193 and 194, Title 10, Code of Alabama, 1940; further petitioner denied (11) that its acts are causing irreparable injury to the property and civil rights of the residents and citizens of the State of Alabama.

In addition to the various defenses to the Bill of Complaint, petitioner, while asserting that Title 10, Sections 192, 193 and 194 of the Code of Alabama, 1940, was not applicable, had procured the necessary forms from the Office of the Secretary of State, Montgomery, Alabama, and had filled in the forms as required by law and offered to file the same. Said forms were attached to its answer and [fol. 6] petitioner stated that it would file these forms if the court would dissolve its orders barring petitioner from registering and would permit petitioner to file the forms attached to its answer.

With its answer petitioner filed a motion to set aside the order to produce. Hearing on this motion was set down for July 25, 1956. On that date, testimony in support of the motion to set aside was introduced. The Attorney General testified that if petitioner would agree that it was doing business in the State of Alabama, the material sought by its motion would not be needed. The court overruled the motion to set aside and ordered petitioner to produce the documents aforesaid.

Petitioner avers that the court order overruling its motion to set aside the order to produce is null and void and beyond the jurisdiction of that court in that the court below acted arbitrarily and contrary to principles enunciated in decisions of this Court and in violation of petitioner's right to due process and equal protection of the laws as secured

by the Fourteenth Amendment to the Constitution of the United States.

Petitioner, advised by counsel that the order was arbitrary and unreasonable and not in accord with the Constitution and laws of the State of Alabama and Constitution and laws of the United States, informed the court that it was unable to comply with the court's order. The court, thereupon, found and adjudged petitioner in willful contempt for failure to produce the documents in accordance with the court's order and assessed a fine of $10,000 against petitioner as punishment for this contempt:

> This suit seeks to enjoin among other things, the respondent, from further conducting its business within the State of Alabama, seeks the dissolution of all its chapters in the State, and asks that on final hearing an order of ouster be entered against the respondent. Due and proper service of the bill has been had upon the respondent, and through its attorneys it has entered an unqualified appearance in the cause. A temporary restraining order was issued upon the filing of the bill. Later the State filed a motion to require respondent to produce certain books, documents and papers. This was duly set down for hearing before the court. At that time counsel for respondent objected to the motion to produce and the court ruled, as shown by its order on file, that certain books, papers and documents mentioned in the motion to produce should be brought into court, and a time was fixed for the production of the evidence requested by the State. Later the respondent moved the court to set aside the order to produce, assigning in substance that it had filed a full and complete answer, that the information called for by the State was already known to the Attorney General and that the books and papers were not now material or necessary to the trial and determination of the issue raised in the suit.
>
> The motion to set aside the order to produce has been argued at length before the court by the Attorney General and by counsel for the respondent, and the respondent has offered oral testimony on the motion to

set aside. Several hours have been consumed in hearing [fol. 7] the matter in open court. The grounds of the motion to vacate are not well taken.

Upon the denial by the court of the motion to set aside the order to produce, the court offered respondent additional time to produce the documents heretofore ordered produced. Counsel for respondent stated in open court that additional time would not be required, that respondent would not produce the books, documents and papers as ordered by the court and that it elected to stand on its decision not to bring the papers into court for the inspection of the State.

The action of the respondent without question puts it in contempt of court, and its counsel practically concede this. So the respondent is in willful contempt of the court, and the only matter before the court at this time is a formal order adjudging respondent in contempt and in taking judicial sanctions against it for its contempt.

The court adjudges and decrees that the respondent is in willful contempt in failing to obey the order of the court to produce for inspection the documents referred to in the order to produce. This brings up now for the consideration of the court what punishment should be decreed against the respondent. Before fixing that punishment these general principles of equity may be stated: The purpose of punishing for a contempt is to vindicate the dignity and authority of the court from the disrespect shown to its orders, to aid in compelling the performance of the court's order, performance which is confessedly in the power of the respondent at this time, and which performance respondent's counsel state will not be given. In the present contempt proceeding the court must consider the character and magnitude of the harm threatened by respondent's continued contumacy and the probable effectiveness of the sanction invoked.

Under the law, there is no way by which a corporation can be jailed or imprisoned, so a fine must be imposed, and in the imposition of this fine the presiding judge may properly consider the extent of the willful

and deliberate defiance of the court's order, the seriousness of the consequences of the contumacious behavior, the necessity of effectively terminating respondent's defiance as required by the public interest, and the importance of deterring such acts in the future. The extent of the punishment is discretionary with the court.

The present willful and deliberate, and considered, defiance of the court's order is not to be lightly taken. It is not such an act which admits of any but severe punishment. The court can not permit its orders to be flouted. It cannot permit a party, however wealthy and influential, to take the law in his own hands, set himself up above the law, and contumaciously decline to obey the orders of a duly constituted court made under the law of the land and in the exercise of an admitted and ancient jurisdiction. If this were allowed there would be no government of law, only the government in a particular case of the litigant who elected to defy the court for his own private and selfish ends. The respondent in this case has elected to stand on its brazen defiance of the order of a court with full power and authority to issue the order against it. Respondent having made its election to defy the court must abide the consequences of its stand. Upon a full consideration of the record in this case, it is

Ordered, adjudged and decreed by the court that National Association for the Advancement of Colored People is in contempt of court for its willful and deliberate refusal to produce the documents described in the former order of the court in this cause.

Ordered, adjudged and decreed further by the court that as punishment for its said contempt the said National Association for the Advancement of Colored People be and it is hereby fined the sum of Ten Thousand Dollars, and judgment is hereby rendered against the said respondent and in favor of the State of Alabama for said sum of Ten Thousand Dollars, for which let execution issue.

Ordered, adjudged and decreed further that in the event the respondent fully complies with the court's

order to produce within five days from this date, then it may move to have this fine reduced or set aside. However, in the event the respondent fails to comply fully with the order to produce within five days from this date, then it is ordered, adjudged and decreed [fol. 8] that the fine for this contempt be $100,000.00.

Let the costs in this matter, to be taxed by the Register, be paid by the said National Association for the Advancement of Colored People.

Done in open court in the presence of the counsel for the parties to this suit on this July 25, 1956.

/s/ Walter B. Jones
Circuit Judge Presiding

Petitioner avers that this order and judgment is null and void and beyond the jurisdiction of the court in that it is clear on the face of the order that the court has exceeded the limits set by Title 13, Section 143 of the Alabama Code of 1940.

Petitioner further avers that the fine fixed is so arbitrary and excessive, without any reasonable relationship to the act committed, or to petitioner's ability to pay it as to render the judgment null and void and beyond the jurisdiction of the court below in that it violates petitioner's rights to due process and equal protection of the laws secured by the Fourteenth Amendment to the Constitution of the United States.

On July 30, 1956, petitioner filed a motion to set aside and/or stay execution of said order pending review, and tendered compliance with the court's order to produce as set forth in the Affidavit of its Executive Secretary, Roy Wilkins.

As to documents requested in paragraph 1 in the state's motion as listed supra and ordered produced by the court, petitioner tendered a copy of the standard form of charter issued to 58 branches in the State of Alabama. Petitioner alleged that it was unable to produce a copy of each such charter since no copies are kept by it, but asserted that each charter issued Branches in the state conform to the standard form which petitioner tendered.

As to documents requested in paragraph 4 of the state's motion and ordered produced by the court below, petitioner asserted that it does not authorize any person or persons as such to solicit memberships or to secure contributions for it; that Mrs. Ruby Hurley and W. C. Patton are the only persons impliedly authorized by virtue of their employment to solicit memberships and/or contributions. Persons soliciting memberships are volunteers and petitioner prescribes no restrictions in this regard.

As to documents requested in paragraph 5 of the state's motion and ordered produced by the court below, petitioner [fol. 9] stated that its files are kept under subject matter headings and that to comply with this portion of the court's order would require it to search all of its files in order to secure the information requested; that it receives correspondence at the rate of 50,000 letters per year and that files are maintained for a period of ten years. Petitioner tendered, however, all memoranda to branches during the twelve-month period preceding June 1, 1956, which would include memoranda to its branches in the State of Alabama.

As to documents listed in paragraph 6 of the state's motion and ordered produced by the court, petitioner asserted that it owns no real property; that all bills of sale for purchase of personal property were in the possession of Mrs. Hurley, who is on vacation, and that petitioner has no key to this office; that the only personal property petitioner owns in the state consists of desks, filing cabinets, chairs, typewriters, mimeograph machine and office supplies estimated to be approximately valued at $400.00 and that this personal property is in its Southeast Regional office in Birmingham. The only bills of sale in its possession were two which petitioner tendered.

As to documents listed in paragraph 7 of the state's motion and ordered produced by the court, petitioner submitted all the cancelled checks and payroll checks covering transactions in Alabama and a copy of the lease of the office used by petitioner in Birmingham, and averred that there are no other agreements. Petitioner asserted it does not maintain a bank account in the State of Alabama. Petitioner's bank statements are statements referring to its general funds from all sources, and petitioner tendered

a statement showing all income and expenditures in the State of Alabama prepared by its accountant.

As to documents listed in paragraph 8 of the state's motion and ordered produced, petitioner submitted all papers, books, letters, etc., pertaining to or between it and Autherine Lucy, Arthurine Lucy Foster and Polly Myers Hudson received from and sent to the State of Alabama.

As to documents listed in paragraph 14 of the state's motion, petitioner asserted that it had no papers of any kind in this category.

With respect to paragraphs number 2 and 11 of the state's motion as granted in the court's order which required petitioner to submit a list of the names and addresses of its [fol. 10] members and names and addresses of its officers, employees and agents, etc., in the State of Alabama, petitioner asserted through affidavit of its Executive Secretary that it believes in good faith that to make available to the Attorney General the names and addresses of its officers and members would subject these persons to private economic reprisals, loss of public and private employment, to harrassment by persons opposed to integration in public schools, to threats of use of force, intimidation and the use of actual force. In support of this, petitioner tendered as exhibits to the affidavit of its Executive Secretary, the affidavits of several of its members residing in Selma, Alabama, whose names had been published for signing a petition requesting the Board of Education to consider desegregation of the public schools in Selma, Alabama, in accordance with the decisions of the United States Supreme Court and, as a result, had been discharged from their employment. Petitioner attached to this affidavit evidence that local laws applicable to Macon and Marengo Counties had been enacted authorizing the Board of Education of these counties to discharge school teachers who belong to organizations advocating racial integration; and newspaper clippings which show that groups operating in the State are organized for the express purpose of opposing the policy and program of petitioner. Despite this showing, the court overruled petitioner's motion to set aside or modify its adjudication of contempt and refused to stay execution of its judgment pending review by this Court.

The decree of the court denying and overruling petitioner's motion to set aside, modify or stay its order of July 25, 1956, is attached hereto as Exhibit III and made a part of this petition.

Petitioner avers that the decree and judgment of the court below denying and overruling its motion to set aside, modify or stay its order of July 25, 1956, is null and void and beyond the jurisdiction of the court below in that it denies to petitioner equal protection and due process of law secured by the Fourteenth Amendment and rights secured under Article I, Section 8 of the Constitution of the United States.

On July 30, petitioner filed a motion to stay execution of the judgment below in this Court pending review here. After hearing on this application on July 31, this motion was denied on the ground that no petition for writ of certiorari was before the court. While this Court was considering petitioner's application for a stay, the court below issued a new order and judgment, adjudging petitioner in [fol. 11] further contempt and fining and punishing petitioner for that contempt in the sum of $100,000.00:

> This Court, having by decree, dated July 25, 1956, ordered, adjudged and decreed respondent, National Association for the Advancement of Colored People, in contempt of Court for its willful and deliberate refusal to produce the documents described in the former order of the Court in this cause, dated July 11, 1956, and having further ordered, adjudged and decreed that as punishment for said contempt the said National Association for the Advancement of Colored People, be fined the sum of $10,000.00, and judgment rendered against the said respondent in favor of the State of Alabama for the sum of $10,000.00, and having further ordered, adjudged and decreed that in the event respondent fully complied with the Court's order to produce within five days from July 25, 1956, that it might move to have its fine reduced or set aside, but in the event the respondent failed to comply fully with the order to produce within five days from July 25, 1956, it was ordered, adjudged and decreed that the fine for this contempt be $100,000.00.

And the respondent, National Association for the Advancement of Colored People, having failed to comply with this order and not having produced the documents described in the former order of the Court in this cause by midnight, July 30, 1956, It Is;

Ordered, Adjudged and Decreed by the Court that the National Association for the Advancement of Colored People, is in contempt of this Court for its willful and deliberate refusal to produce the documents described in the former order of the Court in this cause by midnight, July 30, 1956.

It Is Further Ordered, Adjudged and Decreed by the Court that as punishment for its said contempt the said National Association for the Advancement of Colored People, be and it is hereby fined the sum of $100,000.00, and judgment is hereby rendered against the said respondent and in favor of the State of Alabama for said sum of $100,000.00, for which let execution issue.

That the costs in this matter to be taxed by the Register be paid by the said National Association for the Advancement of Colored People.

Done in Montgomery, Alabama, on this the 31st day of July, 1956.

/s/ Walter B. Jones
Circuit Judge, Presiding

Petitioner avers that this order and judgment is null and void and beyond the jurisdiction of the court in that it is clear on the face of the order and judgment that the court has exceeded the limits set by Title 13, Section 143 of the Alabama Code of 1940.

Petitioner further avers that the fine fixed is so arbitrary and excessive, without any reasonable relationship to the act committed, or to petitioner's ability to pay it as to render the judgment null and void and beyond the jurisdiction of the court below in that it violates petitioner's rights to due process and equal protection of the laws secured by the Fourteenth Amendment to the Constitution of the United States.

Petitioner further avers that it has been denied access to Alabama courts resulting from the action of the court [fol. 12] below to secure a hearing on the merits of this cause and to seek a vindication of its rights to continue its operations in the state and that such denial of access constitutes an infringement of its rights to procedural due process secured by the Fourteenth Amendment to the Constitution of the United States.

Petitioner avers that it has done everything within its power, consistent with its rights and the rights of its members, to comply with the order of the court below to produce certain documents and papers for pre-trial discovery, and that it has failed and refused to comply further with the court's order solely because to do so would constitute a waiver of basic constitutional rights. Petitioner has no other adequate remedy to seek a review of the orders and judgment of the court below except by this petition.

[fol. 13] Petitioner respectfully shows unto this Honorable Court as follows:

1. That the Circuit Court erred in entering its order of July 11, 1956, requiring petitioner to produce certain documents and papers set out therein.

2. That the Circuit Court erred in overruling petitioner's motion to set aside its order to produce.

3. That the Circuit Court erred in adjudging petitioner in contempt and assessing a $10,000 fine against it as punishment therefor.

4. That the Circuit Court erred in punishing petitioner $10,000 for contempt in excess of its statutory authority under Title 13, Section 143 of the Alabama Code of 1940.

5. That the Circuit Court erred in overruling petitioner's motion to set aside and/or modify its order and judgment adjudging petitioner in contempt and/or stay execution of its judgment pending review by this Court.

6. That the Circuit Court erred in adjudging petitioner in contempt and in assessing a $10,000 fine against it as punishment therefor.

7. That the Circuit Court erred in punishing and fining petitioner $100,000 for contempt in excess of its statutory authority under Title 13, Section 143 of the Alabama Code of 1940.

8. That the Circuit Court erred in granting the temporary restraining order.

9. That the Circuit Court erred in failing to dissolve its injunction and in refusing to permit petitioner to register with the Secretary of State after it had tendered compliance with its answer.

10. That all of the errors committed by the Circuit Court and set forth above are in violation of petitioner's right and the rights of its members to due process of law and equal protection of the laws secured under the Fourteenth Amendment to the Constitution of the United States, and violate petitioner's rights under the commerce clause of the federal Constitution.

Wherefore, your petitioner most respectfully prays that a writ of certiorari be issued out of and under the seal of this Court directed to the Circuit Court, Montgomery County, commanding and requiring said Court to certify and send to this Court on a day certain to be designated by this Court, a full and complete transcript of the record [fol. 14] and all proceedings of said Circuit Court, in the cause numbered and entitled aforesaid, to the end that this cause may be reviewed and determined by this Court, and that this Court thereupon proceed to review and correct the errors complained of and to reverse the judgment of the Circuit Court or render such judgment as said Court should have rendered.

Petitioner further prays that it be permitted to proceed in this matter without bond or with cost bond only in that the judgment entered below is not a money judgment in the real sense but a penal judgment; that the state needs no indemnification, that petitioner is suffering irreparable harm in that its operations and activities have been disrupted by virtue of the court's injunction; that petitioner has no assets to enable it to put up bond in excess of minimum herein requested and that to require such bond

would in effect deny petitioner its right to a hearing in this Court in violation of its rights to due process of law.

And petitioner prays for such other, further and additional relief in the premises as to this Court may seem appropriate, and to which he may be entitled and your petitioner will ever pray, etc.

Respectfully submitted,

Fred D. Gray, 113 Monroe Street, Montgomery, Alabama.
Robert L. Carter, 107 West 43rd Street, New York, New York.
Arthur D. Shores, 1630 Fourth Avenue, North, Birmingham, Alabama.
Attorneys for Petitioner.

[fol. 15] Duly Sworn to by Fred D. Gray (Jurat omitted in printing).

We hereby certify that we have served personally a copy of this petition upon the Honorable John Patterson, Attorney General of the State of Alabama, at Montgomery, Alabama.

This the 20th day of August, 1956.

Fred D. Gray, Attorney for Petitioner.

[fol. 16] Exhibit 1 to Petition

In the Circuit Court of the 15th Judicial Circuit of Alabama, Montgomery County, Alabama
In Equity

State of Alabama on the Relation of John Patterson, Attorney General of the State of Alabama, Complainant

vs.

National Association for the Advancement of Colored People, a corporation, Respondent

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DECREE FOR TEMPORARY RESTRAINING ORDER AND INJUNCTION

This cause, being submitted to the Court upon application of the complainant duly verified as required by law for a temporary restraining order and injunction as prayed for in the original complaint filed in this cause and upon consideration thereof and of the evidence offered in support thereof in the form of sworn petition and exhibits attached thereto, and the State not having elected to give bond, the Court is of the opinion same should be granted.

IT IS, THEREFORE, ORDERED, ADJUDGED and DECREED by the Court that the respondent, its agents, servants, employees, attorneys, and all officers thereof and all persons in active concert or participation with respondent, and all persons having notice of this order be, and they hereby are, restrained and enjoined until further orders of the Court from:

1. Conducting any further business of any description or kind or respondent within the State of Alabama; organizing further chapters of respondent within the State of Alabama; maintaining any offices of respondent within the State of Alabama.

2. Soliciting membership in respondent corporation or any local chapters or subdivisions or wholly controlled subsidiaries thereof within the State of Alabama.

3. Soliciting contributions for respondent or local chapters or subdivisions or wholly controlled subsidiaries thereof within the State of Alabama.

[fol. 17] 4. Collecting membership dues or contributions for respondent or local chapters or subdivisions or wholly controlled subsidiaries thereof within the State of Alabama.

5. Filing with the Department of Revenue and the Secretary of State of the State of Alabama any application, paper or document for the purpose of qualifying to do business within the State of Alabama.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that the Sheriff of Montgomery County, Alabama, or any other lawful officer of the State of Alabama, serve a copy of the

petition and this order upon the respondent by service thereof upon any officer, agent or servant of respondent found within the State of Alabama.

DONE AT MONTGOMERY, ALABAMA, this the 1 day of June, 1956.

s/ Walter B. Jones
Circuit Judge

[fol. 18] EXHIBIT II TO PETITION

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA
In Equity No. 30468

STATE OF ALABAMA ON THE RELATION OF JOHN PATTERSON, Attorney General of the State of Alabama, Complainant

vs.

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, a corporation, Respondent

---

INTERLOCUTORY DECREE ON MOTION OF THE STATE TO REQUIRE RESPONDENT TO PRODUCE CERTAIN BOOKS, PAPERS AND DOCUMENTS

The present suit was initiated by the State of Alabama filing an original bill having for its purpose among other things the issuance of a temporary injunction restraining the Respondent from further conducting its business within the State of Alabama; and praying on final hearing that the Respondent be permanently enjoined from conducting any business within the State of Alabama and that the Respondent be enjoined from organizing or controlling any chapters and from exercising any of its corporate functions within the State of Alabama.

In accordance with the prayer of the bill, a temporary restraining order was issued on June 1st, 1956, and on July 5th the Complainant filed its motion to produce and same was duly set for hearing on July 9th, 1956. Then on

June 26, 1956, the Respondent filed its motion to dissolve the temporary injunction and also demurrers to the bill, which were duty set for hearing on July 17, 1956; but the matter is now before the Court and is submitted on the motion to produce filed by the State. A hearing has been had on this motion to produce at which time the same was argued to the Court by the Attorney General and Counsel for the State, and by Counsel for the Respondent.

[fol. 19] In support of the State's motion to produce, the Attorney General offered the sworn original bill, the sworn motion to produce, and the answer of the Respondent in its motion to dissolve the temporary restraining order.

It is the contention of the Respondent that the motion to produce is premature, that the motion should not be ruled upon until the demurrer to the bill has been passed upon, and the Attorney for the Respondent makes the contention that the motion to produce is in the nature of discovery by the State in aid of a penalty or forfeiture against the Respondent, and Respondent argues that a Court of Equity will not grant discovery in aid of a penalty or forfeiture.

The State, on the other hand, contends that its bill is one for discovery and relief in aid of a public purpose, and that under a motion to produce the Respondent may be compelled to present any papers, books, or documents relating to matters within the exclusive knowledge of the Respondent. The State also insists that, aside from any statute, a Court of Equity has inherent power to compel the production of original documents for evidential purposes. This is settled law in Alabama, and this right, as our Supreme Court has frequently said, is a right given under the inherent power of a Court of Equity to compel the production of books and documents when it is shown that such production is indispensable to the doing of justice as auxiliary to any proper relief.

The Court is of opinion that the points urged by the Respondent are not well taken, and that, to the extent hereinafter indicated the Respondent should produce on or before 10:00 a.m., Monday, July 16, 1956, in the office of the Register of the Court, for the inspection of the State of Alabama, the records hereinafter named. It is, therefore,

[fol. 20] ORDERED, ADJUDGED, and DECREED by the Court that Respondent on or before the above-named date and at the above-named place, do produce all of the books, papers or documents described in paragraphs 1, 2, 4, 5, 6, 7, 8, 11 and 14 of the Motion to Produce.

All other questions reserved.

Done at Montgomery, Alabama, this July 11, 1956.

(Signed) Walter B. Jones
Circuit Judge

[fol. 21] EXHIBIT III TO PETITION

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA
In Equity No. 30468

STATE OF ALABAMA ON THE RELATION OF JOHN PATTERSON, Attorney General of the State of Alabama, Complainant

vs.

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, a corporation, Respondent

---

DECREE DENYING PETITION TO STAY ORDER OF JULY 25, 1956

This matter now comes on to be again heard upon the Petition filed this day in open court requesting the Court to set aside, modify, or stay its order of July 25, 1956, wherein Respondent was decreed to be in contempt of court. There are now present in court the attorneys for both the Complainant and the Respondent and the said motion to stay or set aside the Court's order of July 25, 1956, in this court has been argued to the Court by Counsel for the respective parties. The Court took the matter under consideration and is now of opinion that the said motion is not well taken. It is, therefore,

ORDERED, ADJUDGED and DECREED by the Court that the motion of Respondent filed herein this day to set aside,

modify, or stay the execution of said order of July 25, 1956, be, and the motion is hereby denied and overruled.

Done this July 30, 1956.

s/ Walter B. Jones
Circuit Judge Presiding

[fol. 21½] IN THE SUPREME COURT OF ALABAMA
SUBMISSION OF CAUSE—August 20, 1956

Come the parties by Attorneys, and submit this cause on briefs for decision.

[fol. 22] IN THE SUPREME COURT OF ALABAMA
October Term 1956-57

3 Div. 779

EX PARTE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, a Corporation

IN RE: THE STATE OF ALABAMA EX REL. JOHN PATTERSON, as Attorney General of the State of Alabama

v.

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, a Corporation

---

PETITION FOR CERTIORARI TO MONTGOMERY CIRCUIT COURT IN EQUITY

OPINION—December 6, 1956

Per Curiam.

The Circuit Court ordered the petitioner to bring certain books, documents and papers into court on a certain date for inspection by the State of Alabama in a cause filed by the Attorney General on behalf of the State against the petitioner. On the date set to produce, the court granted

the petitioner eight additional days within which to comply with its order.

Thereafter the court offered the petitioner additional time to produce the documents. In reply to the court's offer to grant additional time, counsel for petitioner stated in open court that additional time would not be required, that the petitioner would not produce the books, documents, and papers as ordered by the court and that it elected to [fol. 23] stand on its decision not to bring the papers into court for inspection by the State.

As a result of petitioner's brazen defiance of the order of the court, the petitioner was adjudged in contempt of court and fined $10,000.00. The decree provided that in the event the petitioner failed to comply fully with the order to produce within five days from that date that the fine for contempt would be raised to $100,000.00.

On the last day that petitioner had to comply with the court's order or suffer the fine to be raised for refusing to comply, the petitioner offered to bring some of the documents into court, but refused to fully comply with the order to produce. This offer of partial compliance by the petitioner was not accepted by the court. Thereafter the court decreed that the fine be raised as indicated above.

This petition for writ of certiorari presents the single question, viz: The legality vel non of the order of contempt.

The ultimate aim and purpose of the litigation is to determine the right of the state to enjoin petitioners from doing business in Alabama. That question, however, is not before us in this proceeding.

On the petition for certiorari the sole and only reviewable order or decree is that which adjudges the petitioner to be in contempt. Certiorari cannot be made a substitute for an appeal or other method of review. Certiorari lies to review an order or judgment of contempt for the reason that there is no other method of review in such a case.—*Ex parte Dickens*, 162 Ala. 272, 50 So. 218. Review on certiorari is limited to those questions of law which go to the validity of the order or judgment of contempt, among which are the jurisdiction of the court, its authority to make the decree or order, violation of which resulted in the judg-

ment of contempt. It is only where the court lacked jurisdiction of the proceeding, or where on the face of it the order disobeyed was void, or where procedural requirements with respect to citation for contempt and the like [fol. 24] were not observed, or where the fact of contempt is not sustained, that the order or judgment will be quashed.

It is well to remember that "a proceeding for contempt is not a part of the main case, before the court, but is collateral to it, a proceeding in itself." *Ex parte Dickens, supra.* In the process of the trial in the main case there are ample remedies for review. Appeal lies from interlocutory decrees, such as those on demurrer to the bill, orders granting, or refusing temporary injunctions, orders sustaining or denying motions to dissolve or discharge.—Tit. 7, §§ 754, 1057, Code of 1940.

An order requiring defendant to produce evidence in a pending cause may be reviewed on petition for mandamus. —*Ex Parte Hart,* 240 Ala. 642, 200 So. 783. Hence, if petitioner felt itself aggrieved by the order requiring it to produce certain evidence, it should have sought to have the order reviewed by mandamus. Where a party to a cause elects not to avail of such remedies to test the validity of an order requiring him to do or refrain from doing a certain act and simply ignores or openly declines to obey the order of the court, he necessarily assumes the consequences of his defiance, and is remitted to the lone hope of having the reviewing court find and declare the order of contempt void on its face. That is the status of petitioner here.

Here we do not have before us a decree on the equity of the bill, or a final decree granting relief to complainant, or, in fact, the decree granting a temporary injunction. All that we have presented to us is the order adjudging the petitioner to be in contempt, and as we will show that order is well sustained.

So, were the sanctions imposed upon petitioner for its willful contempt committed in the presence of the court within the court's lawful authority? We will first inquire whether the contempt in the instant case is in its nature civil or criminal.

We approved the following definition of a civil contempt in *Ex parte Dickens, supra.*

> "A 'civil contempt' consists in failing to do something ordered to be done by a court in a civil action, for [fol. 25] the benefit of the opposing party therein." 162 Ala. 276.

The distinction between civil and criminal contempts is thus stated in 12 Am. Jur., Contempt, § 6, p. 392:

> "Criminal contempt proceedings are those brought to preserve the power and vindicate the dignity of the court and to punish for disobedience of its orders. Civil contempt proceedings are those instituted to preserve and enforce the rights of private parties to suits and to compel obedience to orders and decrees made for the benefit of such parties. The former are criminal and punitive in their nature, and the government, the courts, and the people are interested in their prosecution. The latter are civil, remedial, and coercive in their nature, and the parties chiefly interested in their conduct and prosecution are those individuals for the enforcement of whose private rights and remedies the suits were instituted."

Criminal and civil contempts are defined in 17 C.J.S., Contempt, §§ 5 and 6, pp. 7, 8, to be as follows:

> "A criminal contempt is conduct that is directed against the dignity and authority of the court, or a judge acting judicially; it is an act obstructing the administration of justice which tends to bring the court into disrepute or disrespect.
>
> • • • • •
>
> "Civil contempt consists in failing to do something ordered to be done by a court in a civil action for the benefit of the opposing party therein, and is, therefore, an offense against the party in whose behalf the violated order is made. If, however, the contempt consists in doing a forbidden act, injurious to the opposite party, the contempt may be considered criminal."

We indicated our approval of both of the above quotations in *Ex parte King*, 263 Ala. 487, 491, 83 So. 2d 241, 245.

We held the contempt to be criminal in the *King* case at page 490 because it was "'* * * punishment for what has been done, and it committed petitioner to jail for a definite period of time.'" We further stated at page 491, "It seems to us that the penalty is for past disobedience rather than to compel obedience."—*Ex parte King, supra.*

[fol. 26] We also held the contempt to be criminal in *Ex parte Hill*, 229 Ala. 501, 158 So. 531, for the same reasons.

The petitioner insists that its contempt was criminal because the trial court used the word punishment in the decree. The Supreme Court in *United States* v. *United Mine Workers of America*, 330 U.S. 258, 297, n. 64, 67 S. Ct. 677, 91 L. Ed. 884, speaking of the use of the word punishment as indicating the type of contempt said: "'punishment' has been said to be the magic word indicating a proceeding in criminal, rather than civil contempt. * * * But 'punishment' as used in contempt cases is ambiguous. 'It is not the fact of punishment but rather its character and purpose. . . .'—*Gompers* v. *Bucks Stove & Range Co.*, 221 U.S. 418, 441 (1941)." There were two fines in the *United Mine Workers of America* case. The fine assessed for past contumacy was held to be for criminal contempt; and the fine to coerce the union into future compliance with the court's order was held to be for civil contempt.

In the light of these principles it is clear to us that the fines in the instant case were for civil contempt. The decree adjudging the $10,000.00 fine said:

> "Ordered, adjudged and decreed further that in the event the respondent fully complies with the court's order to produce within five days from this date, then *it may move to have this fine reduced or set aside.* However, in the event the respondent fails to comply fully with the order to produce within five days from this date, then it is ordered, adjudged and decreed that the fine for this contempt be $100,000.00." (Emph. sup.)

The $10,000.00 fine was coercive because it gave the petitioner a right to have the fine set aside after full compliance with the order to produce. The $100,000.00 fine

was coercive because the petitioner had five days within which to comply with the court's order or to be fined said amount. Neither fine apparently was severe enough or the petitioner would have produced the documents within [fol. 27] the time allowed instead of offering partial compliance with the court's order on the last day of grace.

The time given the petitioner in the instant case prior to assessing the larger fine was the same time given the union by the Supreme Court of the United States in modifying the civil contempt fine in the *United Mine Workers of America* case, *supra*. We quote from page 305:

> "• • • to pay a fine of $700,000, and further to pay an additional fine of $2,800,000 unless the defendant union, *within five days* after the issuance of the mandate herein, shows that it has fully complied • • •" (Emph. sup.)

Our statutes limit punishment for contempt by the circuit court to five days in jail and a fine of fifty dollars.—Title 13, §§ 9 and 143, Code of 1940. But our cases hold that the statutory limitations apply to criminal contempt and not to civil contempt.—*Ex parte King, supra; Ex parte Hill, supra; Ex parte Dickens*, 162 Ala. 272, 50 So. 218.

The amount of the fine in the instant case, not being limited by statute, is within the sound discretion of the court and in the absence of an abuse thereof will not be disturbed.—*MacInnis* v. *United States*, C.A. Cal. 191 F. 2d 157, 342 U.S. 953, 96 L. Ed. 708 cert. denied 72 S. Ct. 628; *United States* v. *Landes*, C.C.A. N.Y., 97 F. 2d 378; *Ex parte Hill, supra*. The fine adjudged by the circuit court is not excessive.

We could well conclude here by ordering a denial of the writ and a dismissal of the petition, but will discuss briefly the merits of the order to produce so that the parties may know the views entertained by the court.

The petitioner argues that its belated offer to produce included everything except items number 2 and 8 as set out in its brief, and that it was not required to produce these. Items 2 and 8 are:

> [fol. 28] "2. All lists, documents, books, and papers, addresses and dues paid of all present members in the

State of Alabama of the National Association for the Advancement of Colored People, Incorporated.

• • • • •

"8. All lists, books, papers showing the names and addresses of all officers, agents, servants and employees in the State of Alabama of the National Association for the Advancement of Colored People, Inc."

Assuming that the petitioner did offer to bring in for inspection by the State everything except the documents listed in items 2 and 8, could the court require the petitioner to disclose this information? We think so. The court held the information to be competent and relevant; and the petition shows that the court had jurisdiction of the petitioner and of the subject matter.

This court in holding that an officer of the Ku Klux Klan, Inc. was in contempt of court for failing to turn over a list of members of said organization when ordered to do so by the court, said:

"The first duty of every citizen is allegiance to the constitution and laws of the state and nation and the lawful judgments and decrees of the courts. . . . Only privileged communications and facts made so by the law or lawful government regulations are protected from disclosure. The identity of the membership of said organization does not fall within such privileged class."—*Ex parte Morris*, 252 Ala. 551, 554; 42 So. 2d 17.

The Supreme Court of the United States recently upheld a contempt citation of a labor union official, for his failure to produce before a grand jury, union records "showing its collections of work-permit fees, including the amounts paid therefor and the *identity of the payors*. . . ." (Emph. sup.). The court said at page 705:

"The union and its officers acting in their official capacity lack the privilege at all times of insulating the union's books and records against reasonable de- [fol. 29] mands of governmental authorities."—*United States* v. *White*, 322 U.S. 694, 64 S. Ct. 1248, 88 L. Ed. 1542.

The courts, when their jurisdiction is duly invoked, have authority to exercise visitatorial powers and inquire as to the acts of such corporations as the petitioner and keep them within the bounds of their lawful authority.—*Essgee Co. of China* v. *United States*, 262 U.S. 151, 43 S. Ct. 514, 67 L. Ed. 917; *In re Verser-Clay Co.*, 10 Cir., 98 F. 2d 859, 120 A.L.R. 1098; *Wilson* v. *United States*, 221 U.S. 361, 31 S. Ct. 538, 55 L. Ed. 771, Ann. Cas. 1912 D, 558; *Ex parte Morris, supra.*

The guaranties found in the Federal and State Constitutions against compulsory self-incrimination do not extend to a private corporation so as to justify it in refusing, on the ground that it might be thereby incriminated, to comply with a lawful order directing it to produce corporate records in legal proceedings.—*United States* v. *White*, 322 U.S. 694, 64 S. Ct. 1248, 88 L. Ed. 1542; *Wilson* v. *United States, supra; Hale* v. *Henkel*, 201 U.S. 43, 26 S. Ct. 370, 50 L. Ed. 652; *United States* v. *Lawn*, S.D.N.Y., 115 F. Supp. 674.

It is clear, therefore, that the circuit court, in equity, had authority to order the petitioner to disclose names, addresses and dues paid by petitioner's members, officers, agents, and employees and that the petitioner could be held in contempt of court for non-compliance with the court's order to produce.

Writ denied and petition dismissed.

All the Justices concur.

[fol. 30] IN THE SUPREME COURT OF ALABAMA

Ex Parte:

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, a Corporation,

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Petition for Writ of Certiorari to Montgomery Circuit Court, In Equity.

[IN RE: THE STATE OF ALABAMA ex rel. JOHN PATTERSON, as Attorney General of the State of Alabama, vs. NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, a Corporation.]

ORDER DENYING WRIT OF CERTIORARI AND DISMISSING PETITION—December 6, 1956

Comes the Petitioner, National Association For The Advancement of Colored People, a Corporation, by Attorneys, and the Petition for a Writ of Certiorari to the Circuit Court of Montgomery County, In Equity, being submitted on briefs and duly examined and understood by the Court,

It is Considered and Ordered that a Writ of Certiorari to Montgomery Circuit Court, In Equity, be and the same is hereby denied, and that the Petition be and the same is hereby dismissed at the cost of the Petitioner, National Association For The Advancement of Colored People, a Corporation, for which costs let execution issue accordingly.

[fol. 31] CLERK'S CERTIFICATE TO FOREGOING TRANSCRIPT (omitted in printing).

[fol. 32] SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

Upon Consideration of the application of counsel for petitioner(s),

It Is Ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including March 20th, 1957.

Hugo L. Black, Associate Justice of the Supreme Court of the United States.

Dated this 4th day of March 1957.

[fol. 33] SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING CERTIORARI—Filed May 27, 1957

The petition herein for a writ of certiorari to the Supreme Court of the State of Alabama is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

IN THE

Supreme Court of the United States

October Term, 1956

No.

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, a Corporation,

Petitioner,

v.

STATE OF ALABAMA, *ex rel.* JOHN PATTERSON, Attorney General.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of Alabama entered on December 6, 1956, in the above-entitled cause.

Opinion Below

The opinion of the Supreme Court of Alabama is reported at 91 So. 2d (Adv. p. 214) and is printed as Appendix A, *infra*, page 1a. The *ex parte* temporary restraining order issued by the Circuit Court of Montgomery County is printed in Appendix B, *infra*, page 10a. The interlocutory order ordering petitioner to give the Attorney General the names and addresses of all of its members in Alabama and other documents is printed in Appendix B, *infra*, page 11a. The opinion of the Circuit Court, entered on July 25, 1956, adjudging petitioner in contempt and affixing a fine of $10,000 as punishment therefor, and a supplementary fine of $100,000 if the contempt were not purged within 5 days, is printed in Appendix B, *infra*.

IN THE

Supreme Court of the United States

October Term, 1956

No. [redacted]91

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, a Corporation,
Petitioner,

v.

STATE OF ALABAMA, *ex rel.* JOHN PATTERSON,
Attorney General.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

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page 13a. The order of the Circuit Court of July 31 adjudging petitioner in further contempt and affixing the fine of $100,000 as punishment therefor is printed in Appendix B, *infra*, page 17a.

Jurisdiction

The judgment of the Supreme Court of Alabama was entered on December 6, 1956 (R. 30). Jurisdiction of this Court is invoked under Title 28, United States Code, Section 1257(3), petitioner having asserted in the courts below rights, privileges and immunities conferred by the Constitution and laws of the United States. By order of Mr. Justice Black of March 4, 1957, time to file this petition was extended to and including March 20, 1957.

How the Federal Questions Were Presented

The judgment of which review is sought is the judgment of the Supreme Court of Alabama denying and dismissing petitioner's original petition for writ of certiorari seeking to review an adjudication of contempt by the Circuit Court of Montgomery County.

In substance, the allegations before the Supreme Court of Alabama, insofar as pertinent to the jurisdiction of this Court, were that petitioner had been denied constitutional rights guaranteed by the First and Fourteenth Amendments, in that the Circuit Court had issued and enforced by contempt an order that petitioner submit a list of names and addresses of its members, officers, employees and agents in the State of Alabama, notwithstanding petitioner's assertion and showing that to do so would subject these persons to private economic reprisals, loss of public and private employment, harassment by persons opposed to integration of the public schools, intimidation, threats of force and actual force (R. 8-10); and in that the judgment of contempt had barred petitioner's access to Alabama courts to litigate its rights to engage in lawful activities in Alabama (R. 3, 11-13).

Opposition to the motion for petitioner to produce various records for the examination of the Attorney General and to the order of the Circuit Court granting this motion were based on these constitutional grounds (R. 4). After being adjudged guilty of contempt, petitioner asserted these rights in motions to stay or set aside the contempt order filed in the Circuit Court and in the Supreme Court of Alabama (R. 6-10) and in its petitions for writ of certiorari filed in the Supreme Court of Alabama (R. 10). The motion to dissolve the temporary restraining order and injunction and the answer were also based on these grounds (R. 5-6).

How the Federal Questions Were Disposed Of

The Supreme Court of Alabama held that petitioner could not raise its constitutional objections on petition for writ of certiorari. It denied and dismissed the petition, holding that it could quash the order of contempt only if (1) the Circuit Court "lacked jurisdiction of the proceeding," or (2) "where on the face of it the order disobeyed was void," or (3) "where procedural requirements with respect to citation of contempt and the like were not observed," or (4) "where the fact of contempt is not sustained" (R. 23-24). The court decided that mandamus would have been the proper remedy.

But prior to this decision and even in prior proceedings in this case,[1] certiorari had been recognized by the Supreme Court of Alabama as an available remedy to review the merits of a contempt action of the type here complained of. *Ex parte Morris*, 252 Ala. 557, 42 So. 2d 17 (1944); *Ex parte*

[1] Ex parte National Association for the Advancement of Colored People, a Corporation: In re State of Alabama ex rel. John Patterson, Att'y Gen. v. National Association for the Advancement of Colored People, 91 So. 2d (Adv. p. 220) (on motion for stay); Ex parte National Association for the Advancement of Colored People, a Corporation: In re State of Alabama, ex rel. John Patterson, Att'y Gen. v. National Association for the Advancement of Colored People, 91 So. 2d (Adv. p. 221) (on petition for certiorari).

Wheeler, Judge, 231 Ala. 356, 358, 165 So. 74 (1935); *Ex parte Dickens,* 162 Ala. 272, 50 So. 218 (1909); *Ex parte Boscowitz,* 84 Ala. 463, 4. So. 279 (1888); *Ex parte Blakey,* 240 Ala. 517, 199 So. 857 (1941); *Ex parte Sellers,* 250 Ala. 87, 33 So. 2d 349 (1948).

Although the Supreme Court of Alabama did not expressly rule upon petitioner's federal constitutional rights,[2] it nevertheless so disposed of these allegations as to confer jurisdiction upon this Court. Actual determination by the state court of the federal question in terms is not required. *Lawrence* v. *State Tax Commission of Mississippi,* 286 U. S. 276, 282; *Dorchy* v. *Kansas,* 272 U. S. 306, 308-309; *Dewey* v. *Des Moines,* 173 U. S. 193, 199. Moreover, the fact that a decision purports to rest upon state grounds does not preclude this Court from deciding whether federal constitutional rights were in fact denied. *Williams* v. *Georgia,* 349 U. S. 375; *Brinkerhoff-Faris Trust & Sav. Co.* v. *Hill,* 281 U. S. 673, 681-682; *Davis* v. *Wechsler,* 263 U. S. 22; *Rogers* v. *Alabama,* 192 U. S. 226.

Questions Presented

I

Whether the refusal of petitioner to produce names and addresses of its Alabama members was protected by the Fourteenth Amendment's interdiction against state interference with First Amendment rights?

II

Whether the order to produce, the judgment of contempt for failure to produce, and the refusal of the Supreme Court of Alabama to review and reverse said judgment denied to petitioner and its members rights guaranteed by the Fourteenth Amendment?

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[2] After deciding not to review the order of the trial court the Supreme Court of Alabama did "discuss" some of the constitutional questions involved in the petition. (Appendix A, p. 7a).

Statement of the Case

On June 1, 1956, without notice or opportunity for hearing, the Circuit Court of Montgomery County, Alabama, on the complaint of respondent State of Alabama,[3] issued a

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[3] The complaint alleged: (1) That petitioner, a New York Corporation, maintains its Southeast Regional Office in Birmingham, Alabama; (2) that petitioner has employed agents to operate this office; (3) that local chapters of petitioner are organized in the State of Alabama; (4) that membership dues and contributions for said chapters and petitioner are solicited; (5) that petitioner had paid monies to Autherine Lucy and Polly Myers Hudson to aid them to enroll as students at the University of Alabama to test its policy of denying entrance to Negroes; (6) that petitioner has furnished legal counsel to represent Autherine Lucy in her proceedings against the University of Alabama; (7) that petitioner has supported and financed an illegal boycott to compel the Capitol Motor Lines of Montgomery, Alabama, to seat passengers without reference to race; (8) that petitioners' officers, agents and members have for years past and are presently engaged in organizing chapters in the State of Alabama, in collecting dues therefor, soliciting contributions and expending monies in advancing the aims of petitioner; (9) that petitioner has never filed with the Secretary of State a certified copy of its Articles of Incorporation and other information required by Title 10, Sections 192, 193 and 194 of the Code of Alabama, 1940; (10) that petitioner has been and continues to do business in the State of Alabama and in the County of Montgomery in violation of Article 12, Section 232, Constitution of Alabama, 1901, and Section 194, Title 10, Code of Alabama, 1940; (11) that petitioner is continuing to do business within the state without first having complied with the aforesaid constitutional and statutory provisions and is thereby causing irreparable injury to the property and civil rights of the citizens of Alabama for which criminal prosecution and civil action at law afford no adequate relief.

The state prayed for a temporary injunction enjoining and restraining petitioner, its agents and members from further conducting its business within the state and organizing chapters and maintaining offices within the state; it requested dissolution of all existing chapters of the organization and that upon final hearing the court issue a permanent injunction embodying the foregoing and oust petitioner from the state (R. 2).

temporary restraining order and injunction forbidding petitioner, its agents and members from conducting any business whatsoever within the State of Alabama and from:

> "Soliciting membership in respondent corporation or any local chapters or subdivisions or wholly controlled subsidiaries thereof within the State of Alabama.
>
> "Soliciting contributions for respondent or local chapters or subdivisions or wholly controlled subsidiaries thereof within the State of Alabama.
>
> "Collecting membership dues or contributions for respondent or local chapters or subdivisions or wholly controlled subsidiaries thereof within the State of Alabama."

Although the State did not request it, the court also enjoined petitioner from:

> "Filing with the Department of Revenue and the Secretary of State of the State of Alabama any application, paper or document for the purpose of qualifying to do business within the State of Alabama (App. B, pp. 10a-11a)."

On July 2, 1956, petitioner filed a motion to dissolve the temporary restraining order and demurrers to the bill of complaint which were set for hearing on July 17. On July 5th the State filed a motion to require petitioner to produce certain records, letters and papers alleging that the examination of the papers was essential to its preparation for trial (R. 3).

The state's motion was set for hearing on July 9, 1956. After hearing, at which petitioner raised both state and federal constitutional objections, the court issued an order requiring production of the following items requested in the state's motion:

> "1. Copies of all charters of branches or chapters of the National Association for the Advancement of Colored People in the State of Alabama.

"2. All lists, documents, books and papers showing the names, addresses and dues paid of all present members in the State of Alabama of the National Association for the Advancement of Colored People, Inc."

"4. All lists, documents, books and papers showing the names, addresses and official position in respondent corporation of all persons in the State of Alabama authorized to solicit memberships in and contributions to the National Association for the Advancement of Colored People, Inc.

"5. All files, letters, copies of letters, telegrams and other correspondence, dated or occurring within the last twelve months next preceding the date of filing the petition for injunction, pertaining to or between the National Association for the Advancement of Colored People, Inc., and persons, corporations, associations, groups, chapters and partnerships within the State of Alabama.

"6. All deeds, bills of sale and any written evidence of ownership of real or personal property by the National Association for the Advancement of Colored People, Inc., in the State of Alabama.

"7. All cancelled checks, bank statements, books, payrolls, and copies of leases and agreements, dated or occurring within the last twelve months next preceding the date of filing the petition for injunction, pertaining to transactions between the National Association for the Advancement of Colored People, Inc., and persons, chapters, groups, associations, corporations and partnerships in the State of Alabama.

"8. All papers, books, letters, copies of letters, documents, agreements, correspondence and other memoranda pertaining to or between the National Association for the Advancement of Colored People, Inc. and Autherine Lucy, Autherine Lucy Foster and Polly Myers Hudson."

"11. All lists, books and papers showing the names and addresses of all officers, agents, servants and employees in the State of Alabama of the National Association for the Advancement of Colored People, Inc."

"14. All papers, books, letters, copies of letters, files, documents, agreements, correspondence and other memoranda pertaining to or between the National Association for the Advancement of Colored People, Inc., and Aurelia S. Browder, Susie McDonald, Claudette Colvin, Q. P. Colvin, Mary Louise Smith and Frank Smith, or their attorneys, Fred D. Gray and Charles D. Langford" (R. 4, 18-20).

The court then extended the time to produce until July 24th, and simultaneously postponed the hearing on petitioner's demurrers and motion to dissolve the *ex parte* temporary injunction to July 25.

On July 23 petitioner filed its answer on the merits.[4] In addition, petitioner averred that it had procured the

[4] Petitioner admitted: (1) That it was a New York corporation; (2) that it maintained its Southeast Regional Office in Birmingham; (3) that it hired and employed agents to operate this office; but denied (4) that it had organized local chapters in the state and that agents of the Corporation solicited for said local chapters and the parent corporation; denied (5) that it had employed or paid money to Autherine Lucy and Polly Myers Hudson to encourage or aid them in enrolling in the University of Alabama; admitted (6) furnishing legal counsel to assist Autherine Lucy in prosecuting her suit against the University of Alabama; admitted (7) that it had given moral and financial support to Negro residents of Montgomery in connection with their refusal to use the public transportation system of Montgomery and had furnished legal counsel to assist Rev. M. L. King and other Negroes indicted in connection with that matter, but denied all other allegations and inferences contained in that allegation and bill of complaint; and denied (8) that its officers, agents or employees have engaged in organizing chapters for the Corporation in Alabama and Montgomery County, collecting dues, soliciting memberships, loaning or giving personal property to aid present aims of the corporation; admitted (9) that it had never filed with the Secretary of State Articles of Incorporation or designated a place of business or authorized agents within the State; but denied (10) that it was required by Sections 192, 193 and 194 of Title 10, Code of Alabama to do so. Petitioner denied that it had violated Article 12, Section 232, Constitution of Alabama, 1901 and Sections 192, 193 and 194, Title 10, Code of Alabama, 1940; further petitioner denied (11) that its acts were causing irreparable injury to the property and civil rights of the residents and citizens of the State of Alabama (R. 5).

necessary forms for the registration of a foreign corporation supplied by the office of the Secretary of State of the State of Alabama and filled them in as required. Petitioner attached them to its answer and offered to file same if the court would dissolve the order barring petitioner from registering (R. 5-6).

At the same time petitioner filed a motion to set aside the order to produce which motion was set down for hearing on July 25th. On that date, the court overruled the motion to set aside and ordered petitioner to produce the items as above stated. Petitioner, realizing that to produce its membership lists would lead to irreparable harm and being advised by counsel that the order was arbitrary and unreasonable and violative of the Constitution and laws of the State of Alabama and of the United States, informed the court that it was unable to comply with the court's order. Whereupon the court at the same hearing found petitioner in contempt and assessed a fine of $10,000 against the petitioner as punishment for this contempt.[5] The court also ordered that unless petitioner fully complied with its order to produce within five days the fine would be increased to $100,000. The motion to dissolve was not heard and all proceedings thereon were terminated.

On July 30 petitioner filed in the trial court a motion to set aside and/or stay execution of said order pending review by the Supreme Court of Alabama and tendered substantial compliance.[6] However, petitioner asserted that

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[5] See Appendix B, p. 13a.

[6] As to paragraph 1 of the state's motion, petitioner tendered a copy of its standard form of charter stating that it retained no copies of charters but that all charters issued conformed to the tendered form.

As to paragraph 4 it stated that with the exception of two named persons in the State of Alabama those who solicited membership for

it could not produce the names and addresses of its members, as requested in paragraphs 2 and 11 of the state's motion, because it believed in good faith that making these available would constitute a waiver of basic constitutional rights and would subject said persons to private economic reprisals, loss of public and private employment, harassment by persons opposed to the desegregation of public schools and to actual physical violence and force. Petitioner tendered in support thereof the affidavit of its executive secretary and affidavits of members residing in Selma, Alabama, whose names had been published as signers of a petition requesting the board of education to consider desegregating its public schools and, as a result, had been discharged from employment. Petitioner also tendered

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the Corporation were volunteers and petitioner prescribed no restriction in this regard.

As to paragraph 5 of the state's motion, petitioner stated that its files were kept on a subject matter basis, that it receives correspondence at the rate of 50,000 letters per year and that its files are maintained for a period of 10 years and that to furnish this information would require a search of all these files. But petitioner tendered copies of all memoranda to branches which it issued during the twelve month period preceding June 1, 1956.

As to paragraph 6, petitioner asserted that it owned no real property, that all bills of sale, with the exception of two which petitioner tendered, for purchase of personal property, were in the possession of an employee who was on vacation, that the only personal property petitioner owned in the State consisted of office equipment and supplies valued at approximately $400.00.

As to paragraph 7, petitioner submitted all cancelled checks, payroll checks covering transactions in Alabama, a copy of the lease of its office in Alabama and averred that no other agreements existed, that it did not maintain a bank account in the State. Petitioner also tendered a statement showing all income and expenditures in the State.

As to paragraph 8, petitioner submitted all papers, books and letters pertaining to or between it and Autherine Lucy Foster and Polly Myers Hudson.

As to paragraph 14 petitioner asserted that it had no such papers.

evidence that laws applicable to Macon and Marengo counties authorized the boards of education of these counties to discharge teachers belonging to organizations advocating racial integration, and newspaper clippings demonstrating that there were groups operating in the State for the express purpose of ruthlessly opposing the program and policy advocated by petitioner and its members (R. 9-11).

This motion was denied (R. 10, 21), and on the same day petitioner filed a motion in the Supreme Court of Alabama to stay execution of the judgment below pending review by that court. Argument on this motion was heard on July 31, and it was denied that day on the ground that no petition for writ of certiorari was before the court. The Supreme Court of Alabama held that:

> "It is the established rule of this Court that the proper method of reviewing a judgment for civil contempt of the kind here involved is by a petition for common law writ of certiorari. And this Court has through the years felt impelled to grant the writ for purposes of review where a reasonable ground for its issuance is properly presented in such petition.
>
> "But the petitioner here has not applied for writ of certiorari, and we do not feel that the petition presently before us warrants our interference with the judgment of the Circuit Court of Montgomery County here sought to be stayed."[7]

While the Supreme Court of Alabama was considering petitioner's application for a stay, the Circuit Court entered the order adjudging petitioner in further contempt, increasing the fine to $100,000.00.[8]

The effect of these orders was not merely to hold petitioner in contempt but to bar a hearing on petitioner's

[7] 91 So. 2d (Adv. p. 220).

[8] See Appendix B, p. 17a.

fundamental objections to the temporary restraining order and injunction which ousted petitioner from Alabama.

On August 8 petitioner filed a petition for a writ of certiorari (3 Div. 773) in the Supreme Court of Alabama alleging with some detail that the actions of the court below had denied petitioner rights conferred by the First and Fourteenth Amendments to the Constitution of the United States and Article 1, Section 8. It was argued on August 13, 1956, and that same day the Supreme Court of Alabama denied the writ with an order which merely stated that "The averments of the Petition for Writ of Certiorari to the Montgomery Circuit Court, in Equity, are insufficient to grant a Writ of Certiorari."[9]

Thereupon, on August 20, 1956, petitioner filed a more detailed petition for writ of certiorari (3 Div. 779) which, along with the judgment and opinion of the Supreme Court of Alabama, constitutes the certified record filed in this Court. On December 6, 1956, the Supreme Court of Alabama refused to grant this petition on the ground that petitioner could not by certiorari raise the issues presented.

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[9] 91 So. 2d (Adv. p. 221).

Reasons for Allowance of the Writ

I

The Judgment Below, While Appearing To Be Based Upon State Procedural Grounds, Is Nevertheless Reviewable By This Court.

As set out *supra*, under Jurisdiction, the opinion below purports to decide this case on a non-federal ground. Federal rights, however, may be denied as much by refusal of a state court to decide questions as by its erroneous decision. *Lawrence* v. *Mississippi*, 286 U. S. 276, 282. In numerous cases this Court has held review was warranted where federal questions were fairly presented, were necessary to the determination of the cause, and there existed no adequate non-federal ground upon which the decision below could have been properly based. *Dorchy* v. *Kansas*, 272 U. S. 306, 308-309; *Erie R. Co.* v. *Purdy*, 185 U. S. 148, 154; *Dewey* v. *Des Moines*, 173 U. S. 193, 199; *Roby* v. *Colehour*, 146 U. S. 153, 159-160.

Furthermore, this Court has on numerous occasions gone to the merits over obstacles unfairly imposed by state law. See e.g., *Rogers* v. *Alabama*, 192 U. S. 226; *Williams* v. *Georgia*, 349 U. S. 375; *Urie* v. *Thompson*, 337 U. S. 163; *Lawrence* v. *State Tax Commission of Mississippi*, *supra*; *Broad River Power Company ex rel. Daniel*, 281 U. S. 537; *New York Central* v. *New York and Penn Co.*, 271 U. S. 124; *Ward* v. *Love County*, 253 U. S. 17.

As Mr. Justice Brandeis wrote in *Brinkerhoff-Faris Trust & Sav. Co.* v. *Hill*, 281 U. S. 673, 682:

> "* * * while it is for the state courts to determine the adjective as well as the substantive law of the state, they must, in so doing, accord the parties due process of law. Whether acting through its judiciary or through its legislature, a state may not deprive a person of all existing remedies for the enforcement

> of a right, which the state has no power to destroy, unless there is, or was, afforded to him some real opportunity to protect it."

Or as stated in *Davis* v. *Wechsler*, 263 U. S. 22, 24:

> "Whatever springes the state may set for those who are endeavoring to assert rights that the state confers, the assertion of Federal rights, when plainly and reasonably made, is not to be defeated under the name of local practice."

The basis of the ruling below apparently is that the federal questions raised were not properly reviewable by the Supreme Court of Alabama on petition for writ of certiorari. However, until the instant decision, the scope of review of contempt on certiorari extended to a determination of whether petitioner had been exercising a lawful right, and certiorari was considered an appropriate method for attacking the validity of an unconstitutional order issued by the trial court.[10] Where a state court has frequently dealt with particular issues under a specific procedure, this Court has held that a subsequent refusal to consider those issues under that procedure will not bar review by this Court. *Williams* v. *Georgia*, 349 U. S. 375. This case is presented here in the same posture.

The leading Alabama case on certiorari to review a finding of contempt is *Ex parte Dickens*, 162 Ala. 272, 276, 279, 50 So. 218 (1909), which held that:

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[10] Indeed, in this case itself, on motion for a stay, the Alabama Supreme Court, having before it the same record (except for the second order of contempt), which was before it on petition for writ of certiorari, heard oral argument, denied a stay and issued an order stating that certiorari was an appropriate remedy. 91 So. 2d (Adv. p. 220). And in the first petition for writ of certiorari (3 Div. 773) where the same issues were raised as in the second (3 Div. 779), the ground for the Court's dismissal was not that certiorari was an incorrect method for raising the questions petitioner brings here, but that the averments in the petition were "insufficient." 91 So. 2d (Adv. p. 221).

> "Originally, on certiorari, only the question of jurisdiction was inquired into; but this limit has been removed, and now the court 'examines the law questions involved in the case which may affect its merits.' * * * We think that certiorari is a better remedy than mandamus, because the office of a 'mandamus' is to require the lower court or judge to act, and not 'to correct error or to reverse judicial action,' though it may be issued to enforce a 'clear right' * * *; whereas, in a proceeding by certiorari, errors of law in the judicial action of the lower court may be inquired into and corrected."

On certiorari the Supreme Court of Alabama has decided whether "the record in contempt proceedings discloses a want of jurisdiction or an error of law in holding that to be contempt which in law is no contempt but the exercise of a lawful right * * *." *Ex parte Wheeler, Judge,* 231 Ala. 356, 358, 165 So. 74 (1935). See also *Ex parte Boscowitz,* 84 Ala. 463, 4 So. 279 (1888); *Ex parte Blakey,* 240 Ala. 517, 199 So. 857 (1941); *Ex parte Sellers,* 250 Ala. 87, 33 So. 2d 349 (1948).

In *Ex parte Morris,* 252 Ala. 557, 42 So. 2d 17 (1944), where petitioner had been held in contempt for refusing to produce records of the Ku Klux Klan, the Supreme Court of Alabama on a petition for certiorari, passed upon the issues of privilege, self-incrimination, and whether the inquiry was within the rightful scope of the grand jury's powers. There it was also observed that a contention that First Amendment rights were denied in compelling production of membership lists had not been raised below, but that "* * * nothing in the procedure indicates any conflict with the right of free assemblage guaranteed under the First Amendment * * *", implying—especially in view of having passed upon kindred questions—that if the issue had been raised below it would be properly within the scope of its review.

The court below stated that the only proper method to review whether petitioner was exercising a lawful right in

refusing to produce its membership lists was mandamus.[11] However, as indicated above, Alabama precedents prior to the decision in this case indicated that certiorari was a normal and clearly appropriate remedy for this purpose, although in certain circumstances mandamus may have been a permissible alternative.[12]

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[11] This ignored the fact that the denial of petitioner's motion to vacate the order to produce and the adjudication of contempt were rendered almost simultaneously.

[12] In the case of Ex parte Hart, 240 Ala. 642, 200 So. 783 (1941), which the Supreme Court of Alabama has cited as authority for the availability of mandamus in the instant case, mandamus was employed to test the validity of a subpoena *duces tecum* issued by the clerk as a ministerial act, and the opinion in justifying the use of mandamus makes much of the fact that the clerk's duty was ministerial. Mandamus has also been held available when the trial court has *denied* a motion to require an answer to interrogatories, because the party proposing the interrogatory has a clear right to an answer. Ex parte Farrell, 234 Ala. 498, 175 So. 277 (1937). However, mandamus has been denied for the purpose of determining the admissibility of the evidence to be procured on such interrogatories when it is alleged for reasons of irrelevancy the interrogatories need not be replied to. Ex parte Farrell, *supra*. In so ruling the court has held that it will not determine the admissibility of evidence piecemeal, and that there is adequate remedy *on appeal*. But in some cases in which the lower court has allowed interrogatories, mandamus has been held proper to inquire whether the evidence sought is patently inadmissible. Ex parte Rice, 258 Ala. 132, 61 So. 2d 7 (1952); Ex parte Driver, 255 Ala. 118, 50 So. 2d 413 (1951); Ex parte Bahakel, 246 Ala. 527, 21 So. 2d 619 (1945). Ex parte Weissinger, 247 Ala. 113, 22 So. 2d 510 (1945), involving mandamus to vacate a decree adjudging that a plea in abatement was not sustained in a divorce action, contains broad language indicating that mandamus will serve to review questions not otherwise reviewable; but in the instant case the clear indication was that certiorari was available. *See* Ex parte Frenkel, 17 Ala. App. 563, 85 So. 878 (1920), in which the court on mandamus on a claim of self-incrimination pretermitted consideration of whether interrogatories could inquire concerning the amount of whiskey defendant had consumed.

Moreover, if mandamus is an appropriate method of review in cases of this kind, the precedents conclusively demonstrate that certiorari was also approved of as a proper method for testing the issues such as these. *See*, e.g., Ex parte Morris, 252 Ala. 557, 42 So. 2d 17 (1944).

Therefore, it is respectfully submitted that the federal constitutional issues in this case are reviewable by this Court, as they were in *Williams* v. *Georgia, supra,* where after reviewing prior state court decisions in Georgia on the question of the use of the extraordinary motion for new trial, contrary to the decision in the case then being considered, this Court held, 349 U. S. at 389:

> "We conclude that the trial court and the State Supreme Court declined to grant Williams' motion though possessed of power to do so under state law. Since his motion was based upon a constitutional objection, and one the validity of which has in principle been sustained here, the discretionary decision to deny the motion does not deprive this Court of jurisdiction to find that the substantive issue is properly before us."

II

In Refusing To Produce The Names and Addresses Of Its Members Petitioner Was Exercising Rights Guaranteed By The Fourteenth Amendment.

In its impact upon petitioner, a non-profit membership corporation, and its Alabama members whom it represents, the order in suit is a serious interference with essential freedom of speech, freedom of assembly, freedom of association, and the right to petition and sue to seek enforcement of this Court's decisions against state enforced racial segregation. It will not be disputed that the courts of Alabama could not constitutionally prohibit such action by Negroes to vindicate their civil rights. Yet, in the special circumstances existing in Alabama, an effective restraint on such action was accomplished by the order to produce the membership lists and the order of contempt for failure to produce.

Compliance with the order to produce the names and addresses of petitioner's members would have subjected the members to reprisals which would prevent them from continuing their activity seeking compliance with the decisions of this Court (R. 9-11). Failure to produce the lists subjected petitioner to a $100,000 penalty and also effectively prevented petitioner, its members and associates from exercising their First Amendment rights in the State of Alabama.[13] No state can constitutionally subject anyone to this dilemma.

In short, petitioner's contention is that the order to produce the membership lists, the judgment of contempt for failure to produce and the refusal of the Supreme Court of Alabama to review such judgment was an unlawful restraint by the State of Alabama of First Amendment rights. This action by the State of Alabama is contrary to applicable decisions of this Court, including *United States* v. *Rumely*, 345 U. S. 41; *Burstyn Inc.* v. *Wilson*, 343 U. S. 495; *Pennekamp and the Miami Herald Publishing Co.* v. *Florida*, 328 U. S. 331; *Thomas* v. *Collins*, 323 U. S. 516; *National Broadcasting Co. Inc.* v. *U. S.*, 319 U. S. 190; *Times-Mirror Co.* v. *Superior Court*, 314 U. S. 252; *Grosjean* v. *American Press Co., Inc.*, 297 U. S. 233; *Pierce* v. *Society of Sisters*, 268 U. S. 510.

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[13] Under the law of Alabama a party adjudged in contempt may not proceed further in the case. Therefore, the *ex parte* preliminary injunction remains in force. Jacoby v. Goetter Weil Co., 74 Ala. 427 (1883).

A. The Order to Produce the Membership Lists Was Made at a Time when Elected Officials and Private Individuals in Alabama Had Demonstrated Their Determination to Thwart All Efforts toward Compliance with This Court's Decisions Invalidating Racial Segregation and to Subject All Who Sought Compliance to Economic Pressures, Mental Harassment, Threats and Violence:

The issues in this case can only be understood when examined in the light of conditions existing in Alabama. In its opposition to the order to produce its membership lists for the State of Alabama petitioner made allegations, supported by the affidavit of its executive secretary, to the effect that there existed such a state-wide atmosphere of hostility to petitioner that the production of the names of petitioner's members in Alabama would subject them to economic reprisals, loss of employment, mental harassment, threatened and actual violence (R. 9-11). In further support of these allegations appearing in the record, petitioner respectfully requests this Court to take judicial notice of the following public information.

In Alabama, elected representatives have used their official power and private individuals have used their collective influence to build up an atmosphere of hostility against anyone who favors the end of racial segregation, especially members of the NAACP. This hostility, beginning almost immediately after the decisions of this Court in the *School Segregation Cases* on May 17, 1954, increased in intensity up to the time of filing of this action. Indeed it continues up to the present time. For example, the Alabama Legislature in January of 1955 adopted a resolution of nullification stating in part: "The legislature of Alabama declares decisions and orders of the Supreme Court of the United States relating to separation of races in the public schools, are, as a matter of right, null, void and of no effect;"[15] and

[15] Acts of Ala. Spec. Sess. 1956, Act 42, at 70.

in February, 1955, in a Special Session of the Alabama Legislature, both houses, unanimously approved a resolution petitioning Congress to limit the jurisdiction of the United States Supreme Court and other federal courts on appeals from state courts.[16]

An Alabama legislative committee set up for the purpose of preserving segregation in public schools made public on October 20, 1954 its first official report calling for the establishment of private schools to preserve segregation. Included in this report was a threat of economic reprisals against anyone who would seek to end racial segregation in public schools. "White employers would be strongly induced to withhold employment from Negro parents who would take advantage of the intended compulsion, leases would likewise be terminated, and trade and commercial relations, now in satisfactory progress, would be affected."[17]

During December, 1954 and January of 1955, five chapters of the White Citizens Council, originating in Mississippi, were organized in Alabama. A spokesman for that organization reported its purpose as follows: "The white population in this country controls the money, and this is an advantage that the council will use in a fight to legally maintain complete segregation of the races. We intend to make it difficult, if not impossible, for any Negro who advocates desegregation to find and hold a job, get credit or renew a mortgage."[18]

On February 2, 1955, 400 members of the White Citizens Council of Dallas County, Alabama were addressed by the leader of the White Citizens Council of Mississippi.[19]

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[16] Southern School News, Vol. I, No. 7, p. 3.
[17] Southern School News, Vol. I, No. 3, p. 2.
[18] Southern School News, Vol. I, No. 5, p. 2.
[19] Southern School News, Vol. I, No. 7, page 3.

During the year 1955 and 1956 White Citizens Council groups in Alabama were addressed by such persons as Circuit Judge Tom P. Brady, of Brookhaven, Mississippi,[20] Governor Herman Talmadge of Georgia,[21] State Senator Sam Engelhardt [22] and U. S. Senator James O. Eastland.[23]

On June 3, 1955 Attorney General Patterson requested the Alabama Legislature to provide additional funds in order to employ four more attorneys for his staff "primarily" to handle segregation suits. He added, "the initial suits" will be the most important and warned "we must be ready to handle them properly * * *." *Montgomery Advertiser*, June 3, 1955, p. 1.

One of the more recent official actions of the State of Alabama was the resolution of the Montgomery City Com-

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[20] On June 22, 1955 Judge Brady told a White Citizens Council in Dallas County that the NAACP "was a willing and ready tool in the hands of Communist front organizations". What the South needs, he is reported to have said, "is an organization as a slingshot to hit between the eyes of that giant monster NAACP" which "is pledged to the mongrelization of the South." Southern School News, Volume II, No. 1, page 2.

[21] Governor Talmadge urged the White Citizens Council members not to hesitate to use economic pressure on those "who would force racial integration on the South." Southern School News, Vol. II, No. 1, page 2.

[22] Senator Engelhardt told a White Citizens Council gathering in Macon County: "The National Association for the Agitation of Colored People forgets there are more ways than one to kill a snake * * * We will have segregation in the public schools of Macon County or there will be no public schools." Southern School News, Volume II, No. 2, page 13.

[23] On February 10, 1956, 10,000 White Citizens Council members in Montgomery, Alabama, heard Senator James O. Eastland urge the retention of segregation at all costs and saying specifically: "You good people of Alabama don't intend to let the NAACP run your schools." Southern School News, Volume II, No. 9, page 7.

mission in response to the order of the U. S. District Court in the case involving enforcement of racial segregation in intrastate transportation.[24] The official resolution stated, in part, "The City Commission * * * will not yield one inch, but will do all in its power to oppose the integration of the Negro race with the white race in Montgomery and will forever stand like a rock against social equality, intermarriage and mixing of the races in the schools. * * * There must continue the separation of the races under God's creation and plan." [25]

A fiery cross was burned on the lawn of United States District Judge Frank M. Johnson who was one of the three judges participating in the decision invalidating segregation in intrastate transportation in Montgomery.[26]

Montgomery and Birmingham, Alabama, have in recent months witnessed untold numbers of threats, intimidation, and actual bombings of homes and churches of Negroes, known to have supported compliance with the decisions of this Court on racial segregation. Hostility against all who seek compliance with the decisions of this Court on the question of the illegality of state-imposed racial segregation continues to the present time. For example, in a column entitled "Off The Bench" appearing in the *Montgomery Advertiser* for March 4, 1957, Judge Walter B. Jones, trial judge in the instant case, stated among other things: "I speak for the White Race, my race," and, "The integrationists and mongrelizers do not deceive any person of common sense with their pious talk

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[24] Browder v. Gayle, 142 F. Supp. 707 (M. D. Ala. 1956), *aff'd*, 1 L. Ed. 2d 114.

[25] Southern School News, Volume III, No. 7, page 15. The members of the City Commission of Montgomery are also members of the White Citizens Council, Southern School News, Volume III, No. 1, p. 10.

[26] Southern School News, Volume III, No. 9, page 13.

of wanting only equal rights and opportunities for other races. Their real and final goal is intermarriage and mongrelization of the American people." The column reviewing the accomplishments of "white" people concludes with the following: "We have all kindly feelings for the world's other races, but we will maintain at any and all sacrifices the purity of our blood strain and race. We shall never submit to the demands of integrationists. The white race shall forever remain white." (See Appendix C, pp. 19a-22a.)

In this atmosphere of public and organized private opinion in Alabama, the surrender of petitioner's membership lists would inevitably lead to serious economic pressure, loss of employment, mental harassment, threatened or actual violence. The fear of unlawful reprisals resulting from release of the membership lists was heightened by the severity and scope of the restraining order,[27] the court's making the production of petitioner's membership lists a prerequisite to a hearing on petitioner's motion to dissolve the restraining order, even though no testimony was contemplated or could have been taken in connection with the latter,[28] and by the punitive and arbitrary nature of the

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[27] When petitioner offered to register in its answer, there was no issue before the court warranting a continuation of these proceedings. If petitioner had been doing business in Alabama in violation of Alabama law, there are adequate statutory penalties which could have been imposed. See Title 10, Sections 194, 195, 196, Alabama Code of 1940.

[28] After the *ex parte* temporary injunction had been issued, petitioner on July 2 filed a motion to dissolve the injunction and demurrers to the state's complaint. The motion to dissolve tests the equity in the bill. Corte v. State, 259 Ala. 536, 67 So. 2d 786 (1952). On such motion, oral testimony is not permissible unless objection thereto is waived. See Title 7, Section 1061, Alabama Code of 1940. Herman v. Watt, 233 Ala. 29, 169 So. 704 (1936); Cox v. Lermon, 233 Ala. 58, 169 So. 724 (1936); Hunter v. Parkman, 250 Ala. 312, 34 So. 2d 211 (1948); Riley v. Bradley, 252 Ala. 282, 41 So. 2d 641 (1941); Sheldon v. Sheldon, 238 Ala. 489,

fine imposed as punishment for contempt.[29]

Under the circumstances disclosed, we submit, the surrendering of petitioner's membership lists would inevi-

192 So. 55 (1939). From decision on this motion, appeal lies directly to the Supreme Court of the State. See Title 7, Section 757, Alabama Code of 1940; Francis v. Scott, 260 Ala. 590, 72 So. 2d 93 (1954); Patton v. Robison, 253 Ala. 248, 44 So. 2d 254 (1950); Shiland v. Retail Clerks, Local 1657, 259 Ala. 277, 66 So. 2d 146 (1953).

On July 5, the Attorney General filed a motion for pretrial discovery, reciting that the documents requested were "necessary and material to the trial of said cause and contained evidence pertinent to the issues of said trial." The court so scheduled its hearing dates that hearing on the state's motion and compliance therewith became a prerequisite to a hearing on petitioner's motion to dissolve. Upon adjudging petitioner in contempt, the court terminated all further proceedings in connection with this case on authority of Jacoby v. Goetter Weil & Co., 74 Ala. 427 (1883).

[29] In deciding what penalty to assess for contempt, courts must consider the nature of the defiance, the consequences of the contumacious behavior, the necessity of effectively terminating the defiance in the public interest and the importance of deterring such acts in the future. The court must also consider the defendant's financial resources, the consequent seriousness of the burden to it, and whether the refusal constituted the only avenue by which a claimed constitutional right could be preserved for review by a higher court. United States v. United Mineworkers of America, 330 U. S. 258.

The court failed to consider any of these matters in this case, and there is no evidence in the record or before the court to demonstrate that petitioner's financial resources are such as to make it possible for it to pay a fine of $100,000.00. If the court had considered such evidence, it would discover that petitioner is a nonprofit membership corporation; and that during the 12-month period preceding June 1, 1956, its income from sources in Alabama amounted to only $27,309.46, and its expenditures within the state for the same period amounted to only $21,707.60. A fine of this magnitude in view of petitioner's limited resources is certainly excessive.

Title 13, Section 143, Alabama Code of 1940, limits punishment which a court may impose for criminal contempt to a fine of $50 and imprisonment not exceeding 5 days. There is no limitation as to the punishment which the court may impose for civil contempt.

tably lead to serious economic pressure, loss of employment, harassment, intimidation, threats and actual violence against its members.[30]

B. The Action of the Court Below Constituted an Unconstitutional Encroachment by the State of Alabama upon First Amendment Rights of Petitioner and Its Members.

Petitioner is a non-profit membership corporation organized to secure an end to racial discrimination through peaceful means of persuasion.

In large measure, petitioner has been the collective force through which Negroes and others interested in fighting racial intolerance have pooled their resources toward bringing about nationwide compliance with the Fourteenth

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Under the definition of criminal contempt in Ex parte Hill, 229 Ala. 501, 158 So. 531 (1935), and Ex parte King, 263 Ala. 487, 83 So. 2d 241 (1955), the punishment here imposed, see Appendix B, pages 13a-18a, constitutes criminal contempt and, therefore, should have been held to the statutory limitation. In Ex parte Hill, *supra*, the court said at pages 503, 504: "The question here seems to be dependent upon whether the court made an order as a punishment in the nature of criminal contempt or, on the other hand, sought only to enforce a compliance with its writ of injunction. The decree of the court settles that question. It is declared to be punishment for what has been done, and it committed petitioner to jail for a definite period of time." *Compare* the decision in Ex parte Hill *with* the decision in the case at bar.

[30] Fear engendered by such compliance would have destroyed petitioner as an organization even more effectively than the court's order. Consequently, under the circumstances of this case, the disclosure ordered was so unreasonable and arbitrary as to constitute a denial of due process. *See* Oklahoma Press Publishing Co. v. Walling, 327 U. S. 186; Boyd v. United States, 116 U. S. 616; Hale v. Henkel, 201 U. S. 43; Federal Trade Commission v. American Tobacco Co., 264 U. S. 298; United States v. Morton Salt Co., 338 U. S. 632. Disobedience, therefore, could not subject petitioner to contempt.

Amendment.[31] Through petitioner and its affiliates Negroes have sought judicial relief from disenfranchisement because of race, educational discrimination and segregation on public carriers. As an organization through which Americans collectively act to secure rights guaranteed by the Constitution of the United States, petitioner and its members have a constitutional protection against onerous state sanctions which would restrict such activity and deny rights incident thereto. See *Thomas* v. *Collins*, 323 U. S. 516; *De Jonge* v. *Oregon*, 299 U. S. 353.

By means of speeches, pamphlets, public meetings, petitions and other means of communication, petitioner seeks to prepare Negroes and others "for an intelligent exercise of their rights as citizens" and to create an "informed public opinion" concerning these rights. These rights are protected from interference by the states. *Grosjean* v. *American Press Co., Inc.*, 297 U. S. 233, 249-250.

The part of the order to produce to which petitioner objected was that which required petitioner to disclose the names and addresses of its Alabama members. Petitioner objected to identifying these members on the ground that to do so, in the special circumstances of this case, would constitute an unwarranted interference with rights secured to petitioner and its members by the First Amendment and protected from state encroachment by the Fourteenth Amendment.

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[31] See R. 5-6; "Private Attorneys-General: Group Action in the Fight for Civil Liberties," 58 Yale L. J. 574 (1949); Ashmore, The Negro and the Schools 30, 35, 38, 73, 97, 124, 131 (1954); Williams and Ryan, Schools in Transition 38-39, 52, 55, 60, 71, 73, 79, 92, 96-106, 127, 130, 137, 139, 161, 179, 182, 202, 222, 224 (1954); Woodward, The Strange Career of Jim Crow 110-111 (1955); Rose, The Negro in America 242, 259, 263-267 (1956 ed.); Robison, "Organizations Promoting Civil Rights and Liberties", 275 Annals 18, 20 (1951).

Disclosure of the names and addresses of petitioner's members, in view of the members' well-founded fear of exposure to economic and physical reprisals, would inhibit members from speaking, writing, petitioning, or assembling to end racial discrimination as individuals and would also seriously inhibit their right of association, to combine in and join petitioner so that the organization might represent them through the same means of expression. Moreover, the resulting decrease in petitioner's present and potential membership would destroy petitioner's right to exist as an organization for the purposes set out in its charter and to effectively exercise rights of free expression to secure for its members and Negro-Americans in general the equality before the law which the Constitution and this Court accord them.

It is clear that the state of Alabama could not by direct action prohibit petitioner and its members from exercising their rights of free expression although that expression may be contrary to majority opinion. *Kunz* v. *N. Y.*, 340 U. S. 290; *Niemotko* v. *Maryland*, 340 U. S. 268; *De Jonge* v. *Oregon*, 299 U. S. 353.

There can be no doubt that First Amendment rights are protected by the Fourteenth Amendment not only from direct prohibitions upon their exercise by the state but also from the state's "indirect discouragements," *American Communications Assn.* v. *Douds*, 339 U. S. 382, 402, which take the form of taxes, *Murdock* v. *Pennsylvania*, 319 U. S. 105; *Grosjean* v. *American Press Co.*, 297 U. S. 233, licenses, *Burstyn* v. *Wilson*, 343 U. S. 495; *Kunz* v. *N. Y.*, 340 U. S. 290; *Lovell* v. *City of Griffin*, 303 U. S. 444, conditions upon which privileges are granted, *Wieman* v. *Updegraff*, 344 U. S. 183, or the requirements of public disclosures as to political associations, *United States* v. *Rumely*, 345 U. S. 41, 46; *Thomas* v. *Collins*, 323 U. S. 516, 538-540; cf. *United States* v. *Harriss*, 347 U. S. 612.

Further, it seems clear that the concept of free speech must necessarily include the right of individuals to "pool their capital, their interests or their activities under a name and form that will identify collective interests," *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U. S. 123, 187, (concurring opinion) in the form of a corporation or association in order to more effectively secure enjoyment of liberties guaranteed by the Constitution. Where, as here, such collective activity takes place, the state may not impose sanctions against the corporation or association which result in denying to it and its members rights of free speech and assembly. Cf. *Thomas* v. *Collins*, 323 U. S. 516; *Beauharnais* v. *Illinois*, 343 U. S. 250, 262-263.[32]

If the right to freedom of speech and assembly does not include the right of individuals to join together and lawfully express a united opposition to state abridgement of rights, then the future of our democratic form of government is in serious jeopardy.

> "The expression of bloc sentiment is and always has been an integral part of our democratic electoral and legislative processes. They could hardly go on without it. Moreover, to an extent not necessary now to attempt delimiting, that right is secured by the guaranty of freedom of assembly, a liberty essentially coordinate with the freedoms of speech, the press, and conscience. . . . It is not by accident, it is by explicit design, as was said in Thomas v. Collins, ... that these freedoms are coupled together in the First Amendment's assurance. They involve the right to hear as well as to speak, and any restriction upon either attenuates both." (United States v. C. I. O., 335 U. S. 106, 143-144 (concurring opinion).

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[32] See also comment, "State Control Over Political Organizations First Amendment Checks on Powers of Regulation," 66 Yale L. J. 545 (1957).

While, under some circumstances, a "secret oath bound" organization dedicated to unconstitutional purposes and engaging in illegal activities may be "proscribed" by requiring it to give up its membership list, *New York ex rel. Bryant* v. *Zimmerman*, 278 U. S. 63, a corporation such as petitioner, well-known as the chief organization combating governmentally-enforced racial discrimination through peaceful and legitimate means, is entitled to protection against "arbitrary, unreasonable and unlawful interference with . . . [its] patrons," *Pierce* v. *Society of Sisters*, 268 U. S. 510, 535-536; see *Truax* v. *Raich*, 239 U. S. 33, and, as in the special circumstances of this case, such a corporation must be entitled to protect itself against abridgements of its speech, free assembly and the right to petition the government.

This Court has recognized the right of "communication corporations" to free speech and press protection. *Grosjean* v. *American Press Co., Inc.*, 297 U. S. 233; *Times-Mirror Co.* v. *Superior Court*, 314 U. S. 252; *Pennekamp and the Miami Herald Publishing Co.* v. *Florida*, 328 U. S. 331 (newspaper corporations); *National Broadcasting Co., Inc.* v. *U. S.*, 319 U. S. 190 (radio corporations); *Burstyn Inc.* v. *Wilson*, 343 U. S. 495 (motion picture distributor corporation).

Although not all corporations may exercise rights of free speech, the above-cited decisions demonstrate the constitutional protection of free expression on the part of various corporations engaged in the dissemination of information and "free trade in ideas," vital to a self-governing society.[33] Petitioner's purposes and activities are in this respect identical with those of newspapers, radio sta-

[33] In Burstyn Inc. v. Wilson, 343 U. S. 495, 501, the Court considered irrelevant the fact that motion picture "production, distribution, and exhibition is a large-scale business conducted for private profit."

tions, and motion pictures and, therefore, it is entitled to constitutional protection of free speech.

Moreover, decisions of this Court indicate that petitioner is also in a position to assert its members' rights to free speech and assembly in the instant case. In *Grosjean* v. *American Press Co., Inc.*, 297 U. S. 233, 249-250, 280, this Court held the licensing tax violated the general public's right to "the circulation of information" and to "free and general discussion of public matters" as well as the newspaper corporation's rights. Similarly, in *Pierce* v. *Society of Sisters*, 268 U. S. 510, 534-535, this Court held that a compulsory public school statute violated not only the private-school corporations' rights but also "the liberty of parents and guardians." Cf. *Barrows* v. *Jackson*, 346 U. S. 249; *Brewer* v. *Hoxie School District*, 238 F. 2d 91, 105 (8th Cir. 1956). " '[T]he domain of liberty, withdrawn by the Fourteenth Amendment from encroachment by the states' . . . no doubt includes liberty of thought and appropriate means for expressing it . . .", *Hughes* v. *Superior Court of California*, 339 U. S. 460, 464. States are therefore prohibited from taking any action which amounts to a prior restraint on the right of freedom of speech and freedom of the press. *Near* v. *Minnesota*, 283 U. S. 697.

In the instant case, petitioner is the only one who is in a position to assert the constitutional rights of its members. *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U. S. 123, 154, 159, 186-187 (concurring opinions); *International News Service* v. *Associated Press*, 248 U. S. 215, 233. No individual member could challenge the order to produce, assuming the procedural possibility of such action, without disclosing his membership and subjecting himself to economic and physical reprisals resulting in a denial of his rights to free speech and association—the very

reprisals which constitute the basis for refusal to disclose the names and addresses required by the Court's order to produce (R. 8-10).

Under the circumstances of this case, and the applicable decisions of this Court it is apparent that in refusing to produce its membership lists petitioner was exercising constitutionally protected rights.

III

The Rights Asserted By Petitioner And Denied By The Courts Below Are Of Great General Importance Which It Is In The Public Interest To Have Decided By This Court.

The questions involved in this case are perhaps the most important Fourteenth Amendment questions presented to this Court in the wake of the *School Segregation Cases*. For, if the proceedings below are valid, compliance with these decisions and cognate cases may be effectively evaded in other states as well as in Alabama.

While progress has been made in nine of the southern states toward the ending of segregation in public education, the remaining eight southern states, including Alabama, have pursued a statewide policy of preventing compliance with the principles established in the *Brown* case. Indeed, five of these eight states, including Alabama, still deny their Negro citizens admission to their state universities.[34]

Negro Americans in these states are for many reasons unable to exercise their individual rights of freedom of

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[34] Johnson, "Racial Integration in Southern Higher Education," 34 Social Forces 309-12 (1956).

speech and assembly or to combine to effectively exert political pressure to bring about a change in the status quo. The only effective relief has been through legal action in the courts. Consequently, the entire panoply of state power has been invoked for the purpose of insulating state policies of racial segregation against successful attack in the courts.

State legislatures in addition to Alabama's have not only adopted resolutions of "nullification" and "interposition,"[35] but have implemented this by adopting other measures, seeking to circumvent the decisions of this Court and to continue segregation in public education.[36] All of these measures are of questionable constitutionality,

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[35] Senate Concurrent Resolution No. 17-XX, Special Session, 1956, of the Florida Legislature, 1 Race Rel. L. Rep. 948 (1956); House Resolution No. 185, Regular Session, 1956, of the Georgia General Assembly, 1 Race Rel. L. Rep. 438 (1956); House Concurrent Resolution No. 10, Regular Session, 1956, of the Louisiana Legislature, 1 Race Rel. L. Rep. 753 (1956); Senate Concurrent Resolution No. 125, Regular Session, 1956, of the Mississippi Legislature, 1 Race Rel. L. Rep. 440 (1956); Act of February 14, 1956, Calendar No. S. 514, of the South Carolina Legislature, 1 Race Rel. L. Rep. 443 (1956); Senate Joint Resolution No. 3, 1956 Session of the Virginia Legislature, 1 Race Rel. L. Rep. 445 (1956).

[36] *Florida*: Ch. 29746 (1955), 1 Race Rel. L. Rep. 237 (1956); Chs. 31380, 31389, 31390, 31391 (1956), 1 Race Rel. L. Rep. 924, 954, 955, 940 (1956).

Georgia: Appropriation Act §§ 7-8, Acts 11, 12, 13, 15, 197 (1956), 1 Race Rel. L. Rep. 421, 418, 426, 420, 424, 450 (1956).

Louisiana: Const. Art. XII, § 1, La. R. S. 17:331-334, La. R. S. 17.81.1, 1 Race Rel. L. Rep. 239 (1956), *held* unconstitutional in Bush v. Orleans Parish School Board, 138 F. Supp. 336, 337 (E. D. La. 1956), motion for leave to file petition for writ of mandamus denied, 351 U. S. 948 (1956), aff'd — F. 2d — (5th Cir., decided March 1, 1957); La. R. S. 17:2131-2135, La. R. S. 17:443, 1 Race

but they will remain in force unless challenged by public protest and litigation too expensive for the average Negro to finance alone.[37]

Yet Negro Americans' only effective redress lies in such litigation, in the free exercise of the ballot, and freedom of speech and assembly. Only through joint and concerted exercise of these rights can a weak and unpopular minority

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Rel. L. Rep. 730, 941 (1956) now being challenged as unconstitutional in three consolidated suits, Ludley v. Board of Supervisors of L. S. U. and Agricultural and Mechanical College, etc. (Civil Actions No. 1833, 1836, 1837, E. D. La., 1956); Acts 28, 248, 250, 252, Senate Bill 350, Const. Art. XIX, § 26, 1 Race Rel. L. Rep. 728, 943, 944, 942, 927, 776 (1956); House Concurrent Resolution No. 9, 1956 Session, 1 Race Rel. L. Rep. 755 (1956).

Mississippi: House Concurrent Resolution No. 21, Regular Session 1956, 1 Race Rel. L. Rep. 423 (1956); Proposed House Bill No. 30, Regular Session, 1956 (vetoed by Governor), 1 Race Rel. L. Rep. 448 (1956); House Bills No. 31, 119, 880 (1956), 1 Race Rel. L. Rep. 422, 449, 592 (1956).

North Carolina: Chs. 1-7, 1956 Extra Session, 1 Race Rel. L. Rep. 928-940 (1956); Act 336, 1955, 1 Race Rel. L. Rep. 240 (1956), see Carson v. Board of Education of McDowell County, 227 F. 2d 789 (4th Cir. 1955) and Carson v. Warlick, 238 F. 2d 724 (4th Cir., 1956).

South Carolina: Act 329 (1955), 1 Race Rel. L. Rep. 241 (1956), Acts 662, 676, 677, 712, 813 § 3 (1956), 1 Race Rel. L. Rep. 586, 588, 730, 731 (1956).

Virginia: Ch. 70, Extra Session 1956, 1 Race Rel. L. Rep. 1109 (1956) *held* unconstitutional in Adkins v. The School Board of the City of Newport News, — F. Supp. — (E. D. Va., decided January 11, 1957); Chs. 56-71 (1956), 1 Race Rel. L. Rep. 1091-1111 (1956).

See also laws and cases cited in footnote 20.

[37] For a detailed analysis of the need for organized efforts and support in this field see "Private Attorneys-General: Group Action in the Fight for Civil Liberties," 58 Yale L. J. 574 (1949).

succeed in securing equality before the law.[38] This joint and concerted action has taken place largely under petitioner's aegis.

The pattern is clear—either by legislative or judicial act to seek to prevent petitioner and its members from continuing its activities,[39] with the expectation that such state action will effectively frustrate efforts of citizens of the state to seek full compliance with the law as declared by this Court.

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[38] See United States v. Carolene Products Co., 304 U. S. 144, 152 note 4, where Mr. Chief Justice (then Mr. Justice) Stone said: "Nor need we inquire whether similar considerations enter into the review of statutes directed at particular religions, * * * or national * * * or racial minorities * * * whether prejudice against discrete and insular minorities may be a special condition, which tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities, and which may call for a correspondingly more searching judicial inquiry."

[39] *Georgia*: Williams v. National Association for the Advancement of Colored People, Inc., unreported, No. A-58654 (Sup. Ct. Fulton County).

Louisiana: Louisiana ex rel. LeBlanc v. Lewis, unreported, No. 55899 (D. C., 19th Jud. Dist.), app. dismissed *sub nom.* Louisiana ex rel. Gremillion v. National Association for the Advancement of Colored People, Inc., unreported (La. App. First Cir.) "since the cause was removed to the United States District Court, Eastern District of Louisiana, on March 28, 1956 [No. 1678] * * *," 1 Race Rel. L. Rep. 571, 576 (1956).

Mississippi: House Bill No. 33, Regular Session 1956, 1 Race Rel. L. Rep. 451 (1956).

South Carolina: Act No. 741, 1956, 1 Race Rel. L. Rep. 751 (1956).

Texas: Texas v. National Association for the Advancement of Colored People, Inc. (and National Association for the Advancement of Colored People Legal Defense and Educational Fund, Inc.), pending No. 56-649 (D. C. 7th Jud. Dist.), 1 Race Rel. L. Rep. 1068 (1956).

Virginia: Chs. 31-37, Extra Session 1956; Ordinance adopted by Board of Supervisors of Halifax County, August 6, 1956, 1 Race Rel. L. Rep. 958 (1956).

This case does not merely present an abstract issue of whether disobedience of an order requiring a foreign corporation to disclose the names and addresses of its members to the state may properly be punished by contempt. The crucial question is whether a state may deprive a group of its citizens of the right to collectively seek the attainment of full citizenship status as guaranteed by the Constitution and the decisions of this Court. Moreover, if the state is free to utilize the method here employed to suppress support for a federal right in conflict with a state policy of racial discrimination, it can employ this method to enforce statewide conformity in other areas. Moreover, there is no doubt that similar procedures will be followed by courts in other states. "Compulsory unification of opinion achieves only the unanimity of the graveyard." *West Virginia State Bd. of Education* v. *Barnette*, 319 U. S. 624, 641.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A

Opinion of the Supreme Court of Alabama

3 Div. 779

Ex parte National Association for the Advancement of Colored People, a Corporation

In Re: The State of Alabama ex rel. John Patterson, as Attorney General of the State of Alabama,

v.

National Association for the Advancement of Colored People, a Corporation.

Petition for Certiorari to Montgomery Circuit Court in Equity

Per Curiam.

The Circuit Court ordered the petitioner to bring certain books, documents and papers into court on a certain date for inspection by the State of Alabama in a cause filed by the Attorney General on behalf of the State against the petitioner. On the date set to produce, the court granted the petitioner eight additional days within which to comply with its order.

Thereafter the court offered the petitioner additional time to produce the documents. In reply to the court's offer to grant additional time, counsel for petitioner stated in open court that additional time would not be required, that the petitioner would not produce the books, documents, and papers as ordered by the court and that it elected to stand on its decision not to bring the papers into court for inspection by the State.

Appendix A

As a result of petitioner's brazen defiance of the order of the court, the petitioner was adjudged in contempt of court and fined $10,000.00. The decree provided that in the event the petitioner failed to comply fully with the order to produce within five days from that date that the fine for contempt would be raised to $100,000.00.

On the last day that petitioner had to comply with the court's order or suffer the fine to be raised for refusing to comply, the petitioner offered to bring some of the documents into court, but refused to fully comply with the order to produce. This offer of partial compliance by the petitioner was not accepted by the court. Thereafter the court decreed that the fine be raised as indicated above.

This petition for writ of certiorari presents the single question, viz: The legality vel non of the order of contempt.

The ultimate aim and purpose of the litigation is to determine the right of the state to enjoin petitioners from doing business in Alabama. That question, however, is not before us in this proceeding.

On the petition for certiorari the sole and only reviewable order or decree is that which adjudges the petitioner to be in contempt. Certiorari cannot be made a substitute for an appeal or other method of review. Certiorari lies to review an order or judgment of contempt for the reason that there is no other method of review in such a case.—*Ex parte Dickens*, 162 Ala. 272, 50 So. 218. Review on certiorari is limited to those questions of law which go to the validity of the order or judgment of contempt, among which are the jurisdiction of the court, its authority to make the decree or order, violation of which resulted in the judgment of contempt. It is only where the court lacked jurisdiction of the proceeding, or where on the face of it the order disobeyed was void, or where procedural requirements with respect to citation for contempt and the like were not observed, or where the fact of contempt is not sustained, that the order or judgment will be quashed.

Appendix A

It is well to remember that "a proceeding for contempt is not a part of the main case, before the court, but is collateral to it, a proceeding in itself." *Ex parte Dickens, supra.* In the process of the trial in the main case there are ample remedies for review. Appeal lies from interlocutory decrees, such as those on demurrer to the bill, orders granting, or refusing temporary injunctions, orders sustaining or denying motions to dissolve or discharge. Tit. 7, §§ 754, 1057, Code of 1940.

An order requiring defendant to produce evidence in a pending cause may be reviewed on petition for mandamus.—*Ex parte Hart,* 240 Ala. 642, 200 So. 783. Hence, if petitioner felt itself aggrieved by the order requiring it to produce certain evidence, it should have sought to have the order reviewed by mandamus. Where a party to a cause elects not to avail of such remedies to test the validity of an order requiring him to do or refrain from doing a certain act and simply ignores or openly declines to obey the order of the court, he necessarily assumes the consequences of his defiance, and is remitted to the lone hope of having the reviewing court find and declare the order of contempt void on its face. That is the status of petitioner here.

Here we do not have before us a decree on the equity of the bill, or a final decree granting relief to complainant, or, in fact, the decree granting a temporary injunction. All that we have presented to us is the order adjudging the petitioner to be in contempt, and as we will show that order is well sustained.

So, were the sanctions imposed upon petitioner for its willful contempt committed in the presence of the court within the court's lawful authority? We will first inquire whether the contempt in the instant case is in its nature civil or criminal.

We approved the following definition of a civil contempt in *Ex parte Dickens, supra.*

Appendix A

> "A 'civil contempt' consists in failing to do something ordered to be done by a court in a civil action, for the benefit of the opposing party therein."—162 Ala. 276.

The distinction between civil and criminal contempts is thus stated in 12 Am. Jur., Contempt, § 6, p. 392:

> "Criminal contempt proceedings are those brought to preserve the power and vindicate the dignity of the court and to punish for disobedience of its orders. Civil contempt proceedings are those instituted to preserve and enforce the rights of private parties to suits and to compel obedience to orders and decrees made for the benefit of such parties. The former are criminal and punitive in their nature; and the goverment, the courts, and the people are interested in their prosecution. The latter are civil, remedial, and coercive in their nature, and the parties chiefly interested in their conduct and prosecution are those individuals for the enforcement of whose private rights and remedies the suits were instituted."

Criminal and civil contempts are defined in 17 C. J. S., Contempt, §§ 5 and 6, pp. 7, 8, to be as follows:

> "A criminal contempt is conduct that is directed against the dignity and authority of the court, or a judge acting judicially; it is an act obstructing the administration of justice which tends to bring the court into disrepute or disrespect.
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> • • •
>
> "Civil contempt consists in failing to do something ordered to be done by a court in a civil action for the benefit of the opposing party therein, and is,

> therefore, an offense against the party in whose behalf the violated order is made. If, however, the contempt consists in doing a forbidden act, injurious to the opposite party, the contempt may be considered criminal."

We indicated our approval of both of the above quotations in *Ex parte King*, 263 Ala. 487, 491, 83 So. 2d 241, 245.

We held the contempt to be criminal in the *King* case at page 490 because it was "' * * * punishment for what has been done, and it committed petitioner to jail for a definite period of time.'" We further stated at page 491, "It seems to us that the penalty is for past disobedience rather than to compel obedience."—*Ex parte King, supra.*

We also held the contempt to be criminal in *Ex Parte Hill*, 229 Ala. 501, 158 So. 531, for the same reasons.

The petitioner insists that its contempt was criminal because the trial court used the word punishment in the decree. The Supreme Court in *United States* v. *United Mine Workers of America*, 330 U. S. 258, 297 n. 64, 67 S. Ct. 677, 91 L. Ed. 884, speaking of the use of the word punishment as indicating the type of contempt said: "'punishment' has been said to be the magic word indicating a proceeding in criminal, rather than civil contempt. * * * But 'punishment' as used in contempt cases is ambiguous. 'It is not the fact of punishment but rather its character and purpose . . .—*Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418, 441 (1941)." There were two fines in the *United Mine Workers of America* case. The fine assessed for past contumacy was held to be for criminal contempt; and the fine to coerce the union into future compliance with the court's order was held to be for civil contempt.

In the light of these principles it is clear to us that the fines in the instant case were for civil contempt. The decree adjudging the $10,000.00 fine said:

"Ordered, adjudged and decreed further that in the event the respondent fully complies with the court's order to produce within five days from this date, then *it may move to have this fine reduced or set aside.* However, in the event the respondent fails to comply fully with the order to produce within five days from this date, then it is ordered, adjudged and decreed that the fine for this contempt be $100,000.00." (Emph. sup.)

The $10,000.00 fine was coercive because it gave the petitioner a right to have the fine set aside after full compliance with the order to produce. The $100,000.00 fine was coercive because the petitioner had five days within which to comply with the court's order or to be fined said amount. Neither fine apparently was severe enough or the petitioner would have produced the documents within the time allowed instead of offering partial compliance with the court's order on the last day of grace.

The time given the petitioner in the instant case prior to assessing the larger fine was the same time given the union by the Supreme Court of the United States in modifying the civil contempt fine in the *United Mine Workers of America* case, *supra.* We quote from page 305:

"* * * * to pay a fine of $700,000, and further to pay an additional fine of $2,800,000 unless the defendant union, *within five days* after the issuance of the mandate herein, shows that it has fully complied * * * *" (Emph. sup.)

Our statutes limit punishment for contempt by the circuit court to five days in jail and a fine of fifty dollars.—Title 13, §§ 9 and 143, Code of 1940. But our cases hold that the statutory limitations apply to criminal contempt and not to civil contempt.—*Ex parte King, supra; Ex parte Hill, supra; Ex parte Dickens,* 162 Ala. 272, 50 So. 218.

Appendix A

The amount of the fine in the instant case, not being limited by statute, is within the sound discretion of the court and in the absence of an abuse thereof will not be disturbed.—*MacInnis* v. *United States*, C. A. Cal. 191 F. 2d 157, 342 U. S. 953, 96 L. Ed. 708, cert. denied 72 S. Ct. 628; *United States* v. *Landes*, C. C. A. N. Y., 97 F. 2d 378; *Ex parte Hill, supra*. The fine adjudged by the circuit court is not excessive.

We could well conclude here by ordering a denial of the writ and a dismissal of the petition, but will discuss briefly the merits of the order to produce so that the parties may know the views entertained by the court.

The petitioner argues that its belated offer to produce included everything except items number 2 and 8 as set out in its brief, and that it was not required to produce these. Items 2 and 8 are:

> "2. All lists, documents, books, and papers, addresses and dues paid of all present members in the State of Alabama of the National Association for the Advancement of Colored People, Incorporated.
>
> • • •
>
> "8. All lists, books, and papers showing the names and addresses of all officers, agents, servants and employees in the State of Alabama of the National Association for the Advancement of Colored People, Inc."

Assuming that the petitioner did offer to bring in for inspection by the State everything except the documents listed in items 2 and 8, could the court require the petitioner to disclose this information? We think so. The court held the information to be competent and relevant; and the petition shows that the court had jurisdiction of the petitioner and of the subject matter.

Appendix A

This court in holding that an officer of the Ku Klux Klan, Inc. was in contempt of court for failing to turn over a list of members of said organization when ordered to do so by the court, said:

> "The first duty of every citizen is allegiance to the constitution and laws of the state and nation and the lawful judgments and decrees of the courts . . . Only privileged communications and facts made so by the law or lawful government regulations are protected from disclosure. The identity of the membership of said organization does not fall within such privileged class."—*Ex parte Morris*, 252 Ala. 551, 554; 42 So. 2d 17.

The Supreme Court of the United States recently upheld a contempt citation of a labor union official, for his failure to produce before a grand jury, union records "showing its collections of work-permit fees, including the amounts paid therefor and the *identity of the payors* . . ." (Emp. sup.). The court said at page 705:

> "The union and its officers acting in their official capacity lack the privilege at all times of insulating the union's books and records against reasonable demands of governmental authorities."—*United States* v. *White*, 322 U. S. 694, 64 S. Ct. 1248, 88 L. Ed. 1542.

The courts, when their jurisdiction is duly invoked, have authority to exercise visitatorial powers and inquire as to the acts of such corporations as the petitioner and keep them within the bounds of their lawful authority. *Essgee Co. of China* v. *United States*, 262 U. S. 151, 43 S. Ct. 514, 67 L. Ed. 917; *In re Verser-Clay Co.*, 10 Cir., 98 F. 2d 859, 120 A. L. R. 1098; *Wilson* v. *United States*, 221 U. S. 361, 31 S. Ct. 538, 55 L. Ed. 771, Ann. Cas. 1912 D. 558; *Ex parte Morris, supra.*

Appendix A

The guaranties found in the Federal and State Constitutions against compulsory self-incrimination do not extend to a private corporation so as to justify it in refusing, on the ground that it might be thereby incriminated, to comply with a lawful order directing it to produce corporate records in legal proceedings.—*United States* v. *White*, 322 U. S. 694, 64 S. Ct. 1248, 88 L. Ed. 1542; *Wilson* v. *United States*, *supra*; *Hale* v. *Henkel*, 201 U. S. 43, 26 S. Ct. 370, 50 L. Ed. 652; *United States* v. *Lawn*, S. D. N. Y., 115 F. Supp. 674.

It is clear, therefore, that the circuit court, in equity, had authority to order the petitioner to disclose names, addresses and dues paid by petitioner's members, officers, agents and employees and that the petitioner could be held in contempt of court for non-compliance with the court's order to produce.

Writ denied and petition dismissed.

All the Justices concur.

Judgment of the Court

Comes the Petitioner, National Association For The Advancement of Colored People, a Corporation, by Attorneys, and the Petition for a Writ of Certiorari to the Circuit Court of Montgomery County, In Equity, being submitted on briefs and duly examined and understood by the Court,

It is considered and ordered that a Writ of Certiorari to Montgomery Circuit Court, in Equity, be and the same is hereby denied, and that the Petition be and the same is hereby dismissed at the cost of the Petitioner, National Association For The Advancement of Colored People, a Corporation, for which costs let execution issue accordingly.

APPENDIX B

Orders and Decrees of the Circuit Court

DECREE FOR TEMPORARY RESTRAINING ORDER AND INJUNCTION

This cause, being submitted to the Court upon application of the complainant duly verified as required by law for a temporary restraining order and injunction as prayed for in the original complaint filed in this cause and upon consideration thereof and of the evidence offered in support thereof in the form of sworn petition and exhibits attached thereto, and the State not having elected to give bond, the Court is of the opinion same should be granted.

IT IS, THEREFORE, ORDERED, ADJUDGED and DECREED by the Court that the respondent, its agents, servants, employees, attorneys, and all officers thereof and all persons in active concert or participation with respondent, and all persons having notice of this order be, and they hereby are, restrained and enjoined until further orders of the Court from:

1. Conducting any further business of any description or kind or respondent within the State of Alabama; organizing further chapters of respondent within the State of Alabama; maintaining any offices of respondent within the State of Alabama.

2. Soliciting membership in respondent corporation or any local chapters or subdivisions or wholly controlled subsidiaries thereof within the State of Alabama.

3. Soliciting contributions for respondent or local chapters or subdivisions or wholly controlled subsidiaries thereof within the State of Alabama.

Appendix B

4. Collecting membership dues or contributions for respondent or local chapters or subdivisions or wholly controlled subsidiaries thereof within the State of Alabama.

5. Filing with the Department of Revenue and the Secretary of State of the State of Alabama any application, paper or document for the purpose of qualifying to do business within the State of Alabama.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that the Sheriff of Montgomery County, Alabama, or any other lawful officer of the State of Alabama, serve a copy of the petition and this order upon the respondent by service thereof upon any officer, agent or servant of respondent found within the State of Alabama.

Done at Montgomery, Alabama, this the 1st day of June, 1956.

s/ WALTER B. JONES,
Circuit Judge.

EXHIBIT II

INTERLOCUTORY DECREE ON MOTION OF THE STATE TO REQUIRE RESPONDENT TO PRODUCE CERTAIN BOOKS, PAPERS AND DOCUMENTS

The present suit was initiated by the State of Alabama filing an original bill having for its purpose among other things the issuance of a temporary injunction restraining the Respondent from further conducting its business within the State of Alabama; and praying on final hearing that the Respondent be permanently enjoined from conducting any business within the State of Alabama and that the Respondent be enjoined from organizing or controlling any

chapters and from exercising any of its corporate functions within the State of Alabama.

In accordance with the prayer of the bill, a temporary restraining order was issued on June 1st, 1956, and on July 5th the Complainant filed its motion to produce and same was duly set for hearing on July 9th, 1956. Then on June 26, 1956, the Respondent filed its motion to dissolve the temporary injunction and also demurrers to the bill, which were duty set for hearing on July 17, 1956; but the matter is now before the Court and is submitted on the motion to produce filed by the State. A hearing has been had on this motion to produce at which time the same was argued to the Court by the Attorney General and Counsel for the State, and by Counsel for the Respondent.

In support of the State's motion to produce, the Attorney General offered the sworn original bill, the sworn motion to produce, and the answer of the Respondent in its motion to dissolve the temporary restraining order.

It is the contention of the Respondent that the motion to produce is premature, that the motion should not be ruled upon until the demurrer to the bill has been passed upon, and the Attorney for the Respondent makes the contention that the motion to produce is in the nature of discovery by the State in aid of a penalty or forfeiture against the Respondent, and Respondent argues that a Court of Equity will not grant discovery in aid of a penalty or forfeiture.

The State, on the other hand, contends that its bill is one for discovery and relief in aid of a public purpose, and that under a motion to produce the Respondent may be compelled to present any papers, books, or documents relating to matters within the exclusive knowledge of the Respondent. The State also insists that, aside from any statute, a Court of Equity has inherent power to compel the production of original documents for evidential pur-

poses. This is settled law in Alabama, and this right, as our Supreme Court has frequently said, is a right given under the inherent power of a Court of Equity to compel the production of books and documents when it is shown that such production is indispensable to the doing of justice as auxiliary to any proper relief.

The Court is of opinion that the points urged by the Respondent are not well taken, and that, to the extent hereinafter indicated the Respondent should produce on or before 10:00 a.m., Monday, July 16, 1956, in the office of the Register of the Court, for the inspection of the State of Alabama, the records hereinafter named. It is, therefore,

ORDERED, ADJUDGED, and DECREED by the Court that Respondent on or before the above-named date and at the above-named place, do produce all of the books, papers or documents described in paragraphs 1, 2, 4, 5, 6, 7, 8, 11 and 14 of the Motion to Produce.

All other questions reserved.

Done at Montgomery, Alabama, this July 11, 1956.

(Signed) WALTER B. JONES
Circuit Judge

DECREE ADJUDGING RESPONDENT IN CONTEMPT AND FIXING PUNISHMENT THEREFOR

This suit seeks to enjoin among other things, the respondent, from further conducting its business within the State of Alabama, seeks the dissolution of all its chapters in the State, and asks that on final hearing an order of ouster be entered against the respondent. Due and proper service of the bill has been had upon the respondent, and through its attorneys it has entered an unqualified appearance in the cause. A temporary restraining order was issued upon the

filing of the bill. Later the State filed a motion to require respondent to produce certain books, documents and papers. This was duly set down for hearing before the court. At that time counsel for respondent objected to the motion to produce and the court ruled, as shown by its order on file, that certain books, papers and documents mentioned in the motion to produce should be brought into court, and a time was fixed for the production of the evidence requested by the State. Later the respondent moved the court to set aside the order to produce, assigning in substance that it had filed a full and complete answer, that the information called for by the State was already known to the Attorney General and that the books and papers were not now material or necessary to the trial and determination of the issue raised in the suit:

The motion to set aside the order to produce has been argued at length before the court by the Attorney General and by counsel for the respondent, and the respondent has offered oral testimony on the motion to set aside. Several hours have been consumed in hearing the matter in open court. The grounds of the motion to vacate are not well taken.

Upon the denial by the court of the motion to set aside the order to produce, the court offered respondent additional time to produce the documents heretofore ordered produced. Counsel for respondent stated in open court that additional time would not be required, that respondent would not produce the books, documents and papers as ordered by the court and that it elected to stand on its decision not to bring the papers into court for the inspection of the State.

The action of the respondent without question puts it in contempt of court, and its counsel practically concede this. So the respondent is in willful contempt of the court, and the only matter before the court at this time is a formal

order adjudging respondent in contempt and in taking judicial sanctions against it for its contempt.

The court adjudges and decrees that the respondent is in willful contempt in failing to obey the order of the court to produce for inspection the documents referred to in the order to produce. This brings up now for the consideration of the court what punishment should be decreed against the respondent. Before fixing that punishment, these general principles of equity may be stated: The purpose of punishing for a contempt is to vindicate the dignity and authority of the court from the disrespect shown to its orders, to aid in compelling the performance of the court's order, performance which is confessedly in the power of the respondent at this time, and which performance respondent's counsel state will not be given. In the present contempt proceeding the court must consider the character and magnitude of the harm threatened by respondent's continued contumacy and the probable effectiveness of the sanction invoked.

Under the law, there is no way by which a corporation can be jailed or imprisoned, so a fine must be imposed, and in the imposition of this fine the presiding judge may properly consider the extent of the willful and deliberate defiance of the court's order, the seriousness of the consequences of the contumacious behavior, the necessity of effectively terminating respondent's defiance as required by the public interest, and the importance of determining such acts in the future. The extent of the punishment is discretionary with the court.

The present willful and deliberate, and considered, defiance of the court's order is not to be lightly taken. It is not such an act which admits of any but severe punishment. The court can not permit its orders to be flouted. It cannot permit a party, however wealthy and influential, to take the law in his own hands, set himself up above the law, and

contumaciously decline to obey the orders of a duly constituted court made under the law of the land and in the exercise of an admitted and ancient jurisdiction. If this were allowed there would be no government of law, only the government in a particular case of the litigant who elected to defy the court for his own private and selfish ends. The respondent in this case has elected to stand on its brazen defiance of the order of a court with full power and authority to issue the order against it. Respondent having made its election to defy the court must abide the consequences of its stand. Upon a full consideration of the record in this case, it is

Ordered, adjudged and decreed by the court that National Association for the Advancement of Colored People is in contempt of court for its willful and deliberate refusal to produce the documents described in the former order of the court in this cause.

Ordered, adjudged and decreed further by the court that as punishment for its said contempt the said National Association for the Advancement of Colored People be and it is hereby fined the sum of Ten Thousand Dollars, and judgment is hereby rendered against the said respondent and in favor of the State of Alabama for said sum of Ten Thousand Dollars, for which let execution issue.

Ordered, adjudged and decreed further that in the event the respondent fully complies with the court's order to produce within five days from this date, then it may move to have this fine reduced or set aside. However, in the event the respondent fails to comply fully with the order to produce within five days from this date, then it is ordered, adjudged and decreed that the fine for this contempt be $100,000.00.

Appendix B

Let the costs in this matter, to be taxed by the Register, be paid by the said National Association for the Advancement of Colored People.

Done in open court in the presence of the counsel for the parties to this suit on this July 25, 1956.

/s/ WALTER B. JONES
Circuit Judge, Presiding

DECREE ADJUDGING RESPONDENT IN FURTHER CONTEMPT AND FIXING PUNISHMENT THEREFOR

This Court, having by decree, dated July 25, 1956, ordered, adjudged and decreed respondent, National Association for the Advancement of Colored People, in contempt of Court for its willful and deliberate refusal to produce the documents described in the former order of the Court in this cause, dated July 11, 1956, and having further ordered, adjudged and decreed that as punishment for said contempt the said National Association for the Advancement of Colored People, be fined the sum of $10,000.00, and judgment rendered against the said respondent in favor of the State of Alabama for the sum of $10,000.00, and having further ordered, adjudged and decreed that in the event respondent fully complied with the Court's order to produce within five days from July 25, 1956, that it might move to have its fine reduced or set aside, but in the event the respondent failed to comply fully with the order to produce within five days from July 25, 1956, it was ordered, adjudged and decreed that the fine for this contempt be $100,000.00.

And the respondent, National Association for the Advancement of Colored People, having failed to comply

with this order and not having produced the documents described in the former order of the Court in this cause by midnight, July 30, 1956, it is;

ORDERED, ADJUDGED AND DECREED by the Court that the National Association for the Advancement of Colored People, is in contempt of this Court for its willful and deliberate refusal to produce the documents described in the former order of the Court in this cause by midnight, July 30, 1956.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that as punishment for its said contempt the said National Association for the Advancement of Colored People, be and it is hereby fined the sum of $100,000.00, and judgment is hereby rendered against the said respondent and in favor of the State of Alabama for said sum of $100,000.00, for which let execution issue.

That the costs in this matter to be taxed by the Register be paid by the said National Association for the Advancement of Colored People.

Done in Montgomery, Alabama, on this the 31st day of July 1956.

s/ Walter B. Jones
CIRCUIT JUDGE, PRESIDING

APPENDIX C

THE MONTGOMERY ADVERTISER
Monday, March 4, 1957

OFF THE BENCH

By Judge Walter B. Jones

I Speak For The White Race

Sen. Carmack of Tennessee in 1925 made a speech in the U. S. Senate in defense of the South which was then, as now, under vicious attack. He began his address by saying: "I speak, Sir, for my native state, for my native South."

Today I paraphrase the senator's words by saying: "I speak for the White Race, my race," because today it is being unjustly assailed all over the world. It is being subjected to assaults here by radical newspapers and magazines, communists and the federal judiciary. Columnists and photographers have been sent to the South to take back to the people of the North untrue and slanted tales about the South. Truly a massive campaign of super-brainwashing propaganda is now being directed against the white race, particularly by those who envy its glory and greatness. Because our people have pride of race we are denounced as bigoted, prejudiced, racial propagandists and hatemongers by those who wish an impure, mixed breed that would destroy the white race by mongrelization. The integrationists and mongrelizers do not deceive any person of common sense with their pious talk of wanting only equal rights and opportunities for other races. Their real and final goal is intermarriage and mongrelization of the American people.

When members of the white race point with pride to its impressive record and call impartial history to witness its technical and political supremacy through the centuries, its cultural creativeness, we are sneered at as breeders of

race hatred. Pseudo-scientists tell us there is no such thing as a superior race. We are assured by them that the white race will some day be forced into an inferior place by the colored races of the world and that the day of white leadership is nearing its end.

Students of race recognize three main divisions: White, Mongoloid, and Negroid, each created by God with different qualities, instincts, and characteristics, transmissible by descent.

The white or Caucasion race includes peoples whose skin color may be white, pink, ruddy or light brown. Their hair is usually wavy or straight. It is never "dead black" or woolly. The white race includes the tall blonds of Northwest Europe; the Scandinavians, Norwegians, Dutch, Swedes, Russians and also the French, Germans, English, Italians and Americans, and further, the Greeks, the Jews, the Arabs, the Spanish and Portuguese.

So let us now study a little history and inquire if the white race has any justification for pride in its contributions to world civilization and leadership.

Members of the white race have ever been the world's discoverers and explorers, and from our race have come bold spirits like Lief the Red, Columbus, Vasco da Gama, Balboa, Magellan, Cabot, Drake, La Salle and Peary.

Consider sculpture: The white race has produced Proxiteles, Myron, Phidias, Donatello, Houdon, Rodin, Thorwaldsen, St. Gaudens, Daniel Chester French, Canova, Bernini, and Herbert Adams.

When you listen and enjoy beautiful music remember the great musicians: Mozart, Bach, Chopin, Beethoven, Handel, Liszt, Brahms, Wagner and Verdi, are of the white race.

No race has produced poets who compare with our poets: Virgil, Horace, Ovid, Pindar, Lucretius, and Dante;

in the English-speaking wold, Shakespeare, Milton, Byron, Burns, Wordsworth, Pope, Shelley, Tennyson, Whitman, Rosetti, Lanier and Poe.

When you come to consider the eminent artists of the ages, the white race takes pride in its Fra Angelico, Michaelangelo, Boticelli, Velasquez, Raphael, Titian, Rembrandt, Van Dyck, Rubens, Gainsborough, Millet, Corot, Landseer, Whistler, Benjamin West, Abbey and Gilbert Stuart.

The best in literature comes, too, from white authors: Homer, Cervantes, Montaigne, Victor Hugo, Sir Walter Sir Walter Scott, Charles Dickens, Tolstoy, Hans Christian Andersen, Ruskin, Robert Louis Stevenson, Rudyard Kipling, Thackeray and Macaulay.

The white race is proud of its philosophers: Socrates, Ulato, Maimonides, Aristotle, Spinoza, Francis Bacon, Locke, Descartes, Kant, Hume and Spencer.

Practically all useful inventions have been made by members of the white race: The airplane, steamboat, steel, wireless telegraphy, telephone, the telescope, the typewriter, the X-ray, movable type, the rotary printing press, the sewing machine, the cotton gin, the steam engine, the automobile, the motion picture machine, and the incandescent light bulb.

From the ranks of the white race have come the world's great law-givers, statesmen and jurists, among them: Solon of Athens, Gaius, Justinian, Crotius, Coke, Jefferson, Blackstone, Wilson, George Mason and Marshall.

Among the historians of the world the white race can claim Xenophon, Thucydides, Herodotus, Plutarch, Tacitus, J. R. Greene, J. A. Froude, Bancroft, Prescott and Carlyle.

When you consider the great surgeons and medical men the white race can claim Hippocrates, Galen, Vessalius, Pare, William Harvey, John Hunter, Crawford Long, J. Marion Sims, Cushing and Keen.

Appendix C

Remember that Christ, a Jew, is the founder of Christianity. Recall, too, other great religious leaders: Moses, David, Solomon, Judas Maccabeus, John Knox, John Huss, Tyndale, Miles Coverdale, and John Wycliffe.

Every one of the 57 signers of the Declaration of Independence and every one of the 39 signers of the Federal Constitution were members of the white race.

When you look up at the universe of stars and galaxies, recall some of the white race's astronomers and scientists: Copernicus, Galileo, Herschel, Halley, Kepler, Newton and Sir James Jeans.

So when you call the roll of the world's noble and useful spirits, the men and women of the white race stand up in honor and glory with a just pride in the race's achievements. We have all kindly feelings for the world's other races, but we will maintain at any and all sacrifices the purity of our blood strain and race. We shall never submit to the demands of integrationists. The white race shall forever remain white.

IN THE

Supreme Court of the United States

October Term, 1957

No. 91

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, a Corporation,
Petitioner,

v.

STATE OF ALABAMA, *ex rel.* JOHN PATTERSON, Attorney General,
Respondent.

BRIEF FOR PETITIONER

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Respondent.

BRIEF FOR PETITIONER

Opinion Below

The opinion of the Supreme Court of Alabama (R. 23) is reported at 91 So. 2d 214.

Jurisdiction

The judgment of the court below was entered on December 6, 1956 (R. 31). On March 4, 1957, by order of Mr. Justice Black, the time within which to file the petition for writ of certiorari was extended to March 20, 1957. The petition was filed on March 20, 1957, and was granted on May 27, 1957. This Court has jurisdiction of this cause under Title 28, United States Code, Section 1257(3) despite the effort of the Supreme Court of Alabama to interpose the state's procedure to prevent review by this Court. See *Davis* v. *Wechsler*, 263 U. S. 22; *Rogers* v. *Alabama*, 192 U. S. 226; *Dorchy* v. *Kansas*, 272 U. S. 306. Part of

the petition for writ of certiorari was devoted to demonstrating that this case came within the rationale of those cases. As petitioner reads the Brief in Opposition (page 9), respondent concedes the basic validity of this thesis, and *Konigsberg* v. *State Bar of California*, 353 U. S. 252, underscores the fact that the Court has not departed from the principles enunciated in *Davis* v. *Wechsler, supra; Rogers* v. *Alabama, supra*, and cognate cases in its approach to jurisdiction. Petitioner submits, therefore, that jurisdiction to review this cause is unquestionably vested in this Court and rests upon the argument in the petition for writ of certiorari to support this position.

Question Presented

Did the State of Alabama interfere with the freedom of speech and freedom of association and deny due process of law to petitioner, the NAACP, and its members in violation of the Fourteenth Amendment in interfering with and prohibiting the continuation of the efforts of petitioner to secure and enforce rights of Negro citizens guaranteed by the Constitution and laws of the United States?

Statement

Petitioner's Background and General Organizational Activities

Petitioner is a non-profit membership organization, founded in 1909 and incorporated in 1911 under the laws of the State of New York. The driving force which led to its birth was the conviction that if the American public became aware of the injustices which Negroes suffered and the circumscribed lives which they were forced to lead solely because of color discrimination, an aroused public opinion would demand that necessary social, economic and political reforms be effected to remove racial discrimination and prejudice from American life. See Ovington, "How the NAACP Began" 8 *Crisis* 184 (1914); Kytle,

"The Story of the NAACP," *Coronet* 140 (August 1956); "What Is the NAACP," 36 *Information Service* #8, Bureau of Research and Survey, National Council of Churches of Christ in the USA (Feb. 23, 1957). Since its inception, the efforts of the organization and its members have been directed exclusively towards finding adequate ways and means of eradicating color and caste discrimination from all facets of American life. See Wollman, "What's Behind the NAACP," *N. Y. World Telegram & Sun*, May 12, 19, (1956); Davis, "The NAACP: A Look At the Record and Plans of One of the Nation's Most Controversial Organizations," *Winston-Salem Sunday Journal-Sentinel*, Feb. 26, 1956; "Segregation Conflict: Role of the NAACP," *N. Y. Times*, Feb. 26, 1956 E 9; "Voice of the Negro in America," *Milwaukee Journal*, March 11, 1956; "NAACP, Negro Champion, Sets '63 Integration Target," *Chicago Daily News*, March 11, 1956; "An Interview With NAACP Brass," *Montgomery Advertiser*, June 26, 27, 1956.

Its Articles of Incorporation describe its aims and purposes as:

> . . . . voluntarily to promote equality of rights and eradicate caste or race prejudice among the citizens: to advance the interests of colored citizens; to secure for them impartial suffrage; and to increase their opportunities for securing justice in the courts, education for their children, employment according to their ability and complete equality before the law.
>
> To ascertain and publish all facts bearing upon these subjects and to take lawful action thereon; together with any and all things which may lawfully be done by a membership corporation organized under the laws of the State of New York for the further advancement of these objects.[1]

[1] A copy of these Articles was filed with petitioner's answer. These and other allegations in the answer were summarized in the petition for certiorari in the Supreme Court of Alabama, which constitutes the record here.

Petitioner is committed to the achievement of desired social, economic and political reforms within the framework of our democratic society. It seeks to create a climate of opinion in which interracial understanding can take place and basic rights and privileges will be accorded to all persons without regard to race. From time to time it attempts to persuade the legislature to adopt and the executive to enforce remedial laws to provide protection against racial discrimination, and to aid individuals to vindicate their constitutional rights to freedom from discrimination in the courts wherever necessary.[2]

From the outset the organization has condemned racial intolerance and disenfranchisement. It has sought to secure public and legislative support for anti-discrimination laws, *e.g.*, F. E. P. C. laws, anti-lynching laws, federal and state civil rights laws. Its officials have testified on the need for federal legislation of this kind before the Congress and at various local legislative hearings.[3] In

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[2] See, Note, Private Attorneys-General, 58 *Yale L. J.* 574 (1949).

[3] For examples of this phase of petitioner's activities see:

Segregation Hearings, H. J. Res. 75, House Judiciary Comm. (66th Cong. 2d Sess. 1920) pp. 8-10 (Neval H. Thomas).

Anti-Lynching Hearings, S. 121, Subcommittee of Senate Judiciary Comm. (69th Cong. 1st Sess. 1926) pp. 6-37 (James Weldon Johnson); H. R. 259, House Judiciary Comm. (66th Cong. 2d Sess. 1920) pp. 22-27 (Arthur B. Spingarn); S. 1978, Subcommittee of Senate Judiciary Comm. (73rd Cong. 2d Sess. 1934) pp. 62-67 (Arthur B. Spingarn).

Poll Tax Hearings, S. 1280, Subcommittee of the Senate Judiciary Comm. (77th Cong., 2d Sess. 1942) pp. 335-338 (Walter White); H. R. 7, Senate Judiciary Comm. (78th Cong. 1st Sess. 1943) pp. 60-69 (Statements of William H. Hastie and Leon A. Ransom).

FEPC Hearings, S. 2048, Subcommittee of Senate Com. on Education and Labor (78th Cong. 2d Sess. 1944) pp. 196-202 (Walter White); S. 101, Subcommittee of Senate Comm. on Education and Labor (79th Cong. 1st Sess. 1945) pp. 170-174 (William H. Hastie); S. 984, Subcommittee of Senate Committee on Labor and Public Welfare, (80th Cong. 1st Sess. 1947) pp. 182-190 (Roy Wilkins);

1933 it established a full-time legal department whose function was to formulate legal theories which could be utilized

H. R. 4453, Special Subcommittee of House Committee on Education and Labor (81st Cong. 1st Sess. 1949) pp. 293-300 (Clarence Mitchell).

Civil Rights Bill Hearings, S. 83, Subcommittee on Constitutional Rights, Senate Judiciary Com. (85th Cong. 1st Sess. 1957) pp. 291-326 (Roy Wilkins).

Grants to States for the Improvement of Public Elementary and Secondary Schools Hearings, S. 1305, Subcomm. of Senate Comm. on Education and Labor, (76th Cong. 1st Sess. 1939) pp. 178-184 (Charles H. Houston).

Federal Assistance for School Construction Hearings, H. Res. 73 (82nd Cong. 2d Sess. 1952) p. 352 (Letter of Clarence Mitchell).

Universal Military Training Hearings, H. R. 515, House Com. on Military Affairs, (79th Cong. 2d Sess. 1946) pp. 940-948 (Leslie S. Perry).

Universal Military Training Hearings, Senate Committee on Armed Services, (80th Cong. 2d Sess. 1948) pp. 662-668 (Jesse O. Dedmond, Jr.).

Military Reserve Training Hearings, H. R. 6900, (84th Cong. 1st Sess. 1955) pp. 4260-4272 (Clarence Mitchell).

Amendments to Railway Labor Act Hearings, S. 3295, Subcommittee of Committee on Labor and Public Welfare (1950) pp. 242-248 (Clarence Mitchell).

Amending the Interstate Commerce Act—Segregation of Passengers Hearings, H. R. 563 (83rd Cong. 2d Sess. 1954) pp. 96-118 (Robert Carter and Clarence Mitchell).

Economic Security Act Hearings, S. 1130, Senate Committee on Finance (74th Cong. 1st Sess. 1935) pp. 640-647 (Charles H. Houston).

Amendments to Fair Labor Standards Act Hearings, H. R. 3914, House Committee on Labor (79th Cong. 1st Sess. 1945) pp. 441-448 (Leslie S. Perry).

Defense Housing Act Hearings, S. 349, Senate Committee on Banking and Currency (82nd Cong. 1st Sess. 1951) pp. 477-481 (Clarence Mitchell).

Limitation on Debate in the Senate Hearings, S. Res. 11 (82nd Cong. 1st Sess. 1951) pp. 34-64 (Walter White).

Habeas Corpus Hearings, H. R. 5649 (84th Cong. 1st Sess. 1955) pp. 78-88 (Thurgood Marshall).

in the courts to secure relief against discriminatory governmental action and authorized the attorneys in the department to participate directly as counsel in litigation involving or raising questions of racial discrimination where such requests were made by the litigant or his attorney, and where determination of the issues raised was likely to affect the status of Negro Americans in general. Some of the litigation in this Court for which petitioner is in part responsible includes *Missouri ex rel Gaines* v. *Canada*, 305 U. S. 337; *Smith* v. *Allwright*, 321 U. S. 649; *Sipuel* v. *Board of Regents*, 332 U. S. 631; *McLaurin* v. *Oklahoma State Regents*, 339 U. S. 637; *Sweatt* v. *Painter*, 339 U. S. 629; *Brown* v. *Board of Education*, 347 U. S. 483; *Mayor* v. *Dawson*, 350 U. S. 877; *Gayle* v. *Browder*, 142 F. Supp. 707 (M. D. Ala. 1956), aff'd, 352 U. S. 903.

Petitioner has chartered affiliates—designated as college chapters, youth chapters, Branches and State Conferences of Branches—throughout the United States. These affiliates are unincorporated associations and membership therein, upon acceptance at petitioner's principal office in New York, constitutes membership in the corporation. Each affiliate is semi-autonomous, with its own officials and governing body, and within the limits of the general directive "to promote the economic, political, civic and social betterment of colored people, and their harmonious cooperation with other peoples, in conformity with the articles of the Association, its Constitution and by-laws, and as directed by the Board of Directors of the Association," each determines for itself the program it will follow at the local level (R. 7-8).[4]

Petitioner's Board of Directors from time to time announces general policy. Such a general policy was that

[4] Constitution and bylaws of Branches of the N. A. A. C. P., Article I, Section 2, March 1956.

adopted by the Board on October 9, 1950, and by Convention June 1951, forbidding all N. A. A. C. P. affiliates, officers and members to participate in any effort to obtain "separate but equal" facilities.

Petitioner's Background and Organizational Activities In Alabama

The first affiliates of petitioner in Alabama were chartered in 1918. These were the Montgomery and Selma Branches. Since that time petitioner has chartered various other affiliates in Alabama and in April, 1951 established a regional office in Birmingham, designated as its Southeast Regional Office.

A Southeast Regional Secretary, whose chief duties are to supervise and coordinate the programs of petitioner's various affiliates in Alabama, Georgia, Florida, Mississippi, North Carolina, South Carolina and Tennessee, was placed in charge of this office. She disseminates information to members and to the general public concerning civil rights and racial discrimination to seek to guide and assist petitioner's various affiliates in the region in devising and executing a program designed to eliminate racial discrimination in their respective communities. Petitioner employed a field secretary, and his duties were to interest persons in Alabama in the aims, purposes and program of the organization and to convince as many persons as possible to take an active part in the effort to secure equal rights for Negroes. Except for these two persons and a clerical worker in the Birmingham office, all other persons connected with the organization in Alabama, whether officers or members, were unpaid volunteers (R. 7).

Petitioner rented office space in Birmingham for its Southeast office and secured furniture and other office equipment, but otherwise owns no property, real or personal, in Alabama. The injunction here issued necessitated

the closing of this office, the dropping of the field secretary and clerical worker from petitioner's payroll and the transfer of the Regional Secretary and petitioner's Southeast Regional Office to another state.

Through its national office, its affiliates, and more recently its Southeast Regional Office, petitioner aided Alabama Negroes in seeking vindication of their constitutional rights in the federal courts by helping to defray the expenses of suits involving the right of Negroes to vote, to equal access to nonsegregated facilities in public schools, to non-discriminatory treatment in public transportation facilities and to due process in criminal proceedings. Among law suits in this category were *Mitchell* v. *Wright*, 154 F. 2d 580 (5th Cir. 1946); *Gayle* v. *Browder*, *supra*; *Fikes v. Alabama*, 352 U. S. 191; *Reeves* v. *Alabama*, 348 U. S. 891.

Petitioner engaged in these activities without complying with Sections 192, 193, 194, Title 10, Alabama Code of 1940 and Article 12, Section 232, Constitution of Alabama, 1901, which require foreign corporations to register with the Secretary of State, because petitioner in good faith believed that these provisions did not apply to it (R. 8). The first notice petitioner had that the state deemed it subject to these statutes was the service of the temporary restraining order and the complaint herein (R. 7), whereupon petitioner offered to register (R. 7).

The Instant Proceedings

Upon a bill of complaint filed by the Attorney General of Alabama, which alleged in essence that petitioner was giving aid and assistance to Alabama citizens in their efforts to secure relief from racial discrimination and doing and "continuing to do business" within the state without first having complied with Article 12, Section 232, Consti-

tution of Alabama, 1901; Title 10, Sections 192, 193, 194, Code of Alabama, 1940 and was "thereby causing irreparable injury to the property and civil rights of the residents and the citizens of Alabama for which criminal prosecution and civil action at law afford no adequate relief," the trial court issued the requested restraining order *ex parte*, barring petitioner from:

> Soliciting membership in respondent corporation or any local chapters or subdivisions or wholly controlled subsidiaries thereof within the State of Alabama.
>
> Soliciting contributions for respondent or local chapters or subdivisions or wholly controlled subsidiaries thereof within the State of Alabama.
>
> Collecting membership dues or contributions for respondent or local chapters or subdivisions or wholly controlled subsidiaries thereof within the State of Alabama.

And, although the state did not request it, from:

> Filing with the Department of Revenue and the Secretary of State of the State of Alabama any application, paper or document for the purpose of qualifying to do business within the State of Alabama (R. 19).

On July 2, 1956, petitioner filed a motion to dissolve the injunction and demurrers to the bill (R. 3). Hearing on the motion to dissolve and the demurrers was set down for July 17 (R. 3). On July 5, the state filed a motion for a pretrial discovery order to require petitioner to disclose to the state the names and addresses of all of its members and of all persons authorized to solicit memberships; all correspondence pertaining to or between petitioner and any person, corporation, etc., in Alabama; all evidence of ownership of real and personal property held by petitioner in the state; cancelled checks, bank statements, etc., showing any financial transaction between peti-

tioner and persons, chapters, etc., in the state; all letters, papers, correspondence, agreements between or pertaining to petitioner and Autherine Lucy and Polly Ann Myers; the names and addresses of all of its officers and employees in the state; and all papers relating to or between Aurelia S. Browder and the other plaintiffs in *Gayle* v. *Browder*, their Alabama counsel and petitioner (R. 5-6). The state alleged in its motion that examination of the requested documents was essential to its preparation for trial (R. 3).

The state motion, given precedence over petitioner's pleadings, was heard on July 9 and granted on July 11 (R. 6), with petitioner being ordered to produce the documents on July 16, 1957 (R. 6). (The order is set out at R. 20.) The court extended the time to produce the documents requested to July 24, 1956, and simultaneously continued the hearings on the demurrers and motion to dissolve from July 17 to July 25 (R. 6). On July 23 petitioner filed its answer, to which it attached executed foreign corporation registration forms ready for filing with the Secretary of State and asked the court's permission to file same, which permission was refused (R. 7). On the same date petitioner filed a motion to set aside the order to produce, which was set down for hearing on July 25. After such hearing, on July 25th, the court denied petitioner's motion to vacate the order for pretrial discovery and, upon petitioner's continued refusal to comply therewith, adjudged it in contempt and fined it $10,000, with a proviso that if the order was not obeyed within 5 days the fine was to be $100,000 (R. 8-11).

On July 30, petitioner filed a motion to set aside and stay execution of the contempt order pending its review by the Supreme Court of Alabama (R. 11). With this motion petitioner tendered all documents requested except the names and addresses of its members and its correspondence files. The latter request could not be complied with because it was unduly burdensome for petitioner to

go through all its files and furnish correspondence requested and interfered with the normal operation of its offices (R. 12). The former request was refused because of petitioner's belief that the order *per se* constituted an abridgement of its rights and those of its members to freedom of association and free speech, and because of its belief that to comply with the order would subject petitioner organization to destruction and its members to reprisals and harassment, thereby effectively depriving petitioner and its members of the right to the exercise of freedom of association and free speech—all in violation of their constitutional rights (R. 13). Accompanying this motion, and tendered, were affidavits showing that members of the N. A. A. C. P. in nearby counties had been subjected to reprisals when identified as signers of a school desegregation petition, and a showing of evidence of hostility to the purposes and aims of the organization in Alabama, and evidence that groups in the state were organized for the express purpose of ruthlessly suppressing petitioner's program and policy (R. 13).

This motion was heard, tender of documents refused and the motion denied on July 30 (R. 14), and on the same day a motion to stay was filed in the Supreme Court of the state (R. 14). This motion was heard on July 31 and was denied the same day (R. 14). Without waiting for the Supreme Court to announce its decision, the trial court on July 31 adjudged petitioner in further contempt and assessed a fine of $100,000 against it (R. 14-15). Petitioner filed a petition for writ of certiorari and brief in support thereof in the Supreme Court of Alabama on August 8, which petition was denied that same day as insufficient (91 So. 2d 221). On August 20, 1956, petitioner filed a second petition for writ of certiorari, which was denied December 6, 1956 (R. 23). From this decision petitioner brings the cause here.

The Climate in Alabama

This case cannot be properly considered without being viewed against the background and setting in which it arose. Alabama officials in responsible positions have set the tone and pattern for local governmental officials, civic leaders, educators, parents, and citizens in voicing bitter opposition to any change in the state policy and pattern of racial segregation, regardless of any requirement of the United States Constitution. The Governor,[5] Lt. Governor,[6]

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[5] *Southern School News*, March, 1956, Vol. II, No. 9, Gov. James E. Folsom: "Anybody with any sense knows that Negro children and white children are not going to school together in Alabama any time in the near future . . . in fact, not for a long time." p. 6, col. 1.

Southern School News, April, 1956, Vol. II, No. 10, Gov. James E. Folsom campaigning for election as national Democratic committeeman: "My views are well known on the subject. I was and am for segregation. That's all I have to say on the subject." p. 5, col. 1.

Southern School News, June, 1956, Vol. II, No. 12, Gov. James E. Folsom: Folsom announced that white and Negro students would not attend the same grade schools and high schools in Alabama "as long as I am Governor." p. 10, col. 3.

Southern School News, July, 1956, Vol. III, No. 1, Gov. James E. Folsom commenting on Lucy affair: "There is not going to be any race-mixing in our public schools as long as I am governor." p. 10, col. 5.

[6] *Southern School News*, December, 1955, Vol. II, No. 6, Lt. Gov. Guy Hardwick addressing the Alabama Chamber of Commerce stated that there can be no enforcement of the Supreme Court decision in Alabama because the public is "bitterly opposed" to such a change. He stated that the state legislature had passed a school placement law and "it appears they will pass others and additional laws in order to insure that segregation will remain in our schools." p. 4, col. 4.

Southern School News, August, 1957, Vol. IV, No. 2, Lt. Gov. Guy Hardwick: "[If the civil rights bill passes] all white men will, of necessity, be drawn together by common bonds of resistance, and I predict they will refuse to employ, feed, clothe or otherwise aid or assist Negroes if the latter insist on disrupting and upsetting our way of life in Alabama . . . We will resort to the greatest and most effective boycott ever seen in Alabama or any other state . . . No man will be elected governor of Alabama unless he enters into a solemn pact with the voters . . . to maintain segregation, and further pledges he will not use the National Guard . . . manning tanks, to escort Negro children into white schools as was done in Tennessee and Kentucky." p. 4, col. 5.

state legislators,[7] the Alabama State Superintendent of

[7] *Southern School News*, June, 1955, Vol. 1, No. 10, Sen. Sam Engelhardt (Macon County): As far as I am concerned, abolition of segregation will never be feasible in Alabama and the South. No brick will ever be removed from our segregation walls." p. 2, col. 2. Sen. Walter Givhan (Dallas County): "I think we have won a decided victory for the South. It was brought about by the constant fight the southern people have put up, bringing to the attention of the American public that integration wasn't feasible and never would have worked, and that the southern people under no condition would have stood for it." p. 2, col. 2. Sen. Roland Cooper (Wilcox): "I cannot forsee where desegregation would be feasible or local conditions would warrant it within 100 years in Wilcox County." p. 2, col. 2. Sen. E. O. Eddins (Marengo County) advocated prompt action "to pass every law that would be a safeguard so far as segregation is concerned." p. 2, col. 2.

Southern School News, August, 1955, Vol. II, No. 2, Sen. Sam Engelhardt (Macon County) stated to the Alabama Senate Education Committee "We've got 190 colored teachers in Macon County and the board [Macon's Board of Education] tells me they'll fire every one of them that takes part in this agitation." p. 13, col. 3. * * * "The National Association for the Agitation of Colored People forgets there are more ways than one to kill a snake . . . we will have segregation in the public schools of Macon County or there will be no public schools." p. 13, col. 5.

Southern School News, January, 1957, Vol. III, No. 7, Sen. Sam Engelhardt (Macon County) commenting on The Institute on Non-Violence in Montgomery, Dec. 3-9, 1956: "Montgomery is sitting on a potential keg of dynamite. If there is violence, and pray that there won't be, each of us should buy a towel and send it to the Supreme Court for them to wipe the blood off their hands . . . Think white, talk white, buy and hire white." p. 15, col. 1.

Southern School News, April, 1957, Vol. III, No. 10, Rep. W. L. Martin (Greene County): The state appropriation to Tuskegee was originally made "to prevent the necessity of Negroes attending white colleges." Should members of their race insist on enrolling at white colleges, "they have no more need for state money." p. 13, col. 2-3.

Southern School News, June, 1957, Vol. III, No. 12, Senator Albert Boutwell (Birmingham): "I think we will adopt only measures to keep segregation in a legal manner, and that we are going to do it with a great deal of deliberation. We don't want to abolish schools except as a last resort. But we must be ready to do it if necessary." p. 12, col. 1-2. Senator Broughton Lamberth (Tallapoosa County): "We'll do everything possible to keep segregation in the schools." p. 13, col. 4.

Schools,[8] local officials[9] and even judges,[10] have consistently issued public declarations that the constitutional mandate prohibiting racial discrimination in public education should be resisted, and segregation strengthened. Following the May 17, 1954 decision, the state assembly adopted scores of resolutions and pieces of legislation,

[8] *Southern School News*, June, 1955, Vol. I, No. 10, State Superintendent of Education, Austin R. Meadows commenting on the May 31, 1955 U. S. Supreme Court decision: "I believe that the overwhelming majority of Negroes realize that segregation is what the people in Alabama want, and I believe they are friendly enough to cooperate with the majority who want segregation." p. 2, col. 2.

Southern School News, May, 1957, Vol. III, No. 11, State Superintendent of Education, Dr. Austin R. Meadows, suggested that segregation might be maintained by "our white people influencing the Negroes to go to their own schools." p. 5, col. 2.

[9] *Southern School News*, Sept., 1955, Vol. II, No. 3, Board of Education of Mobile in a formal statement of policy refusing to end segregation: ". . . the tradition of two centuries can be altered by degrees only." p. 3, col. 4.

Southern School News, February, 1956, Vol. II, No. 8, L. R. Grimes, Chairman of the Montgomery County Board of Revenue announcing his membership in the White Citizens Council: "I think every right-thinking white person in Montgomery and the South should do the same. We must make certain that Negroes are not allowed to force their demands on us . . ." p. 6, col. 5.

Southern School News, December, 1956, Vol. III, No. 6, Mayor W. A. Gayle of Montgomery commenting on the bus decision: "Like thousands of our Montgomery citizens, the city commission . . . deplores the . . . decision . . . at the same time we ask our fellow citizens to remain calm and coolheaded, while your commissioners work diligently and earnestly to do all legal things necessary to continue enforcement of our segregation laws and ordinances of all kinds . . . enacted in recognition of long-established customs, morals and habits of our people . . . We shall continue to enforce segregation." p. 13, col. 3.

Southern School News, January, 1957, Vol. III, No. 7, the Montgomery City Commission commenting on the Supreme Court decision ending segregation on Montgomery buses: "Although we consider the Supreme Court's decision to be the usurpation of the power to

[10] Text of this footnote appears on page 15.

ranging from a "nullification" resolution to pupil placement laws, intended to maintain racial segregation and defy federal authority.[11] Threatened and actual loss of

amend the Constitution . . . we have no alternative but to recognize it. That is not to say, however, that we will not continue, through every legal means at our disposal, to see that the separation of races is continued on the public transportation system here in Montgomery . . . The City Commission . . . will not yield one inch, but will do all in its power to oppose the integration of the Negro race with the white race in Montgomery and will forever stand like a rock against social equality, intermarriage, and mixing of the schools . . . There must continue the separation of the races under God's creation and plan." p. 15, col. 1-2.

Southern School News, March, 1957, Vol. III, No. 9, a Montgomery grand jury returning indictments against four white men on dynamiting charges: The return of the indictments "should not be construed as any weakening of the determination of the people of Montgomery to preserve our segregated institutions. We reaffirm our belief in complete segregation. We are determined to maintain it and to maintain law and order as it applies both to those who support segregation and to those who oppose it." p. 12, col. 4.

[10] *Southern School News*, May, 1957, Vol. III, No. 11, on April 8, Circuit Judge James A. Hare said: ". . . despite federal rulings, segregation matters will be handled at the local level." In charging a Dallas County grand jury, the Black Belt judge said he would "advise our colored friends who follow the false hopes of integration to go where their hopes lead them." "Since the Supreme Court decision of 1954", Hare said, "more segregation laws have been passed than in the previous 150 years." p. 5, col. 2. The trial judge in the instant proceedings has been especially outspoken in his support for racial segregation and condemnation of petitioner (see *infra* at p. 40).

[11] Nullification Resolution: Acts of Ala. Spec. Sess. 1956, Act 42, at 70. Resolution petitioning Congress to limit the jurisdiction of the U. S. Supreme Court and other federal courts on appeals from state courts: *Southern School News*, Vol. 1, No. 7, p. 3. Report of a special legislative committee calling for a private school plan and a threat of economic reprisals: *Southern School News*, Vol. 1, No. 3, p. 2. In the following issues of *Southern School News* there are reports of resolutions and legislation defying the Constitution of the United States: Vol. IV, No. 1, July, 1957; Vol. III, Nos. 1-12, July, 1956-June, 1957; Vol. II, Nos. 1-12, July, 1955-June, 1956; Vol. I, Nos. 1-10, Sept., 1954-June, 1955. "Status of School Segregation-Desegregation in the Southern and Border States." *Southern Education Reporting Service*, April 15, 1957, p. 3.

employment and other forms of economic reprisals have accompanied legislation intended to punish financially those persons who advocate ordery compliance with the law as well as those who advocate equal rights for all. Violence and bloodshed have been predicted by high state officials if segregation is ended. Threats and actual acts of violence have been directed against Negroes who seek to assist their constitutional rights [12] as well as against whites who seek compliance with the law.[13] While Negroes have been

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[12] Year-long series of bombings and shootings of Negro leaders in bus segregation issue. *Southern School News*, Feb., 1957; Vol. III, No. 8, p. 15.

In Montgomery, 19 major acts of violence—9 bombings and 10 shootings—were directed against buses, or the homes of Negro leaders. *Southern School News*, March, 1957, Vol. III, No. 9, p. 12.

In Montgomery, Dec., 1956, one Negro woman was hit in both legs by bullet during firing on buses. *Southern School News*, Jan., 1957, Vol. III, No. 7, p. 14.

In Birmingham, the home of Rev. F. L. Shuttlesworth, a Negro leader of the bus boycott, was bombed. *Southern School News*, Jan., 1957, Vol. III, No. 7, p. 14.

In Montgomery, four Negro churches were bombed. Also the homes of two ministers, both leaders in bus boycott, one leader white and one Negro. A Negro cab stand was blasted. An attempt was made to bomb home of Rev. M. L. King. *Southern School News*, Feb., 1957, Vol. III, No. 8, p. 15.

Ku Klux Klan activity, demonstrations, and cross burnings, were reported in Opelika, Montgomery, Mobile, Birmingham, Prattville and other Alabama communities. *Southern School News*, Jan. 1957, Vol. III, No. 7, p. 15; Feb., 1957, Vol. III, No. 8, p. 15; March, 1957, Vol. III, No. 9, p. 13; June, 1957, Vol. III, No. 12, p. 13; Dec., 1956, Vol. III, No. 6, p. 13.

In Birmingham, Rev. F. L. Shuttlesworth was physically attacked when he attempted to enroll Negro students in an all-white school. *N. Y. Times*, Sept., 10, 1957, p. 1, col. 3.

In Birmingham, two false bombing reports at Phillips High School and student demonstrations at Woodland High School followed reports that Negro students would attempt to enroll at these schools. *N. Y. Times*, Sept. 11, 1957, p. 23, col. 3.

[13] In Birmingham, a white steel worker (Lamar Weaver) was attacked on March 6, 1957 by a crowd of white men after he sat beside a Negro couple in a Birmingham railroad station. Weaver, who

refused official protection from threats of physical violence, where Negroes have protested against deprivation of their rights, state officials have been quick to curb this "lawless" activity.[14] Other pressures have been exerted on Negroes to maintain "voluntary" segregation. Alabama officials have committed themselves to a course of persecution and intimidation of all who seek to implement desegregation. Negroes who seek to secure their constitutional rights do so at the peril of intimidation, vilification, economic reprisals, and physical harm.

It is in this climate that the instant proceedings took place. In view of petitioner's seeking the elimination of racial segregation and other barriers of race, its attempted suppression by state authorities was all but inevitable. With whatever cloak of legality respondent may seek to invest these proceedings, the due process accorded petitioner should be viewed against a background of open opposition by state officials and an atmosphere of violent hostility to petitioner and its members. It is only in this context that these proceedings can be properly measured to test their fundamental validity. So viewed and considered, the unconstitutionality and illegality of these proceedings will be unmistakably revealed.

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has made pro-integration speeches, escaped in his car in a storm of heavy stones. He was struck in the face with a suitcase, windows of the car were shattered. *Southern School News*, April, 1957, Vol. III, No. 10, p. 13.

The home of a white minister was bombed. *Southern School News*, Feb., 1957, Vol. III, No. 8, p. 13.

[14] *Southern School News*, August, 1957, Vol. IV, No. 2, Att. Gen. John Patterson, in a statement issued after raids on the Tuskegee Civic Association and a Tuskegee print shop: "[The investigation] was undertaken due to the illegal operations of the TCA, due to the racial trouble and strife the organization is stirring up in Macon County and due to certain individuals connected with the said organization who have connections with foreign organizations whose purposes and aims are not in the best interests of the welfare of this state. Such a boycott as is being carried out by the TCA is in violation of the laws of this state and cannot be tolerated. Certain foreign organizations that are bent upon stirring up racial strife and disorder in our state have been instrumental in bringing about this illegal boycott." p. 4, col. 4.

Summary of Argument

Petitioner has been adjudged in contempt, fined $100,000 and ousted from Alabama—solely because petitioner and its members seek to obtain for Negro Americans "what they think is due them" under our system of government. *United States* v. *Harriss*, 347 U. S. 612, 633, 635 (Justice Jackson dissenting).

Petitioner is a voluntary association whose primary objective, as its name implies, is improvement of the status of colored people in the United States. It was organized in 1909 and incorporated under the laws of the State of New York as a membership, non-profit corporation in 1911. Today petitioner is a national organization and has affiliated local units in Alaska and the 48 states. Petitioner does not advocate violence to further its aims; it espouses no subversive or alien ideology; it fosters no social or political reforms adverse to the interests of the United States. On the contrary, it seeks to nourish faith in the perdurance of our democratic institutions.

Petitioner is a political organization, and in seeking to improve the Negro's status through democratic processes, petitioner and its members are exercising rights of free association and free speech basic to our society.

From the rationale distilled from the decisions of this Court, petitioner and its members have the protection of the Fourteenth Amendment to pursue these activities free from state encroachment. See *e.g.*, *United States* v. *Rumley*, 345 U. S. 41; *DeJonge* v. *Oregon*, 299 U. S. 353; *Thomas* v. *Collins*, 223 U. S. 516; *Wieman* v. *Updegraff*, 344 U. S. 183, 194, 195; *Terminiello* v. *Chicago*, 337 U. S. 1; *Sweezy* v. *New Hampshire*, 354 U. S. 234. Cf. *Burstyn* v. *Wilson*, 343 U. S. 495; *Watkins* v. *United States*, 354 U. S. 178.

Petitioner asserts here its own right to freedom of association and free speech, as well as that of its members and contributors. See *Sweezy* v. *New Hampshire*, *supra*.

at 250, 251; *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U. S. 123, 149, 183. Since loss of memberships and contributions are also involved, it claims property rights as well. See *Pierce* v. *Society of Sisters*, 268 U. S. 510.

Alabama alleges in these proceedings the right to restrain all activities of petitioner and its members and the right to punish petitioner in contempt for refusing to submit to state interference with its right of free speech and association. The justification for restraint of petitioner's activities was that it had failed to qualify to do business in the state in accordance with state law and that injunctive relief was essential to protect the state's welfare (R. 2). Even conceding this to be a bona fide state interest does not dispose of the issues which these proceedings raise. Petitioner and its members seek to implement in Alabama rights secured by the federal Constitution, and a state cannot bar such activity altogether on the pretext of securing compliance with state law. Cf. *Hill* v. *Florida*, 325 U. S. 538; *Garner* v. *Teamsters C. & H. Union*, 346 U. S. 485, 500; *Thomas* v. *Collins*, *supra*; and see *Theard* v. *United States*, 354 U. S. 278. That the state's real aim is not petitioner's registration with the Secretary of State, but petitioner's ouster, is crystal clear. Moreover, there is nothing in the state's bill of complaint or in the record to justify the circuit court in issuing its injunctive decree without first according petitioner an opportunity to be heard.

The interlocutory order requiring petitioner to disclose to the state the names and addresses of its members, disobedience of which gave rise to petitioner's contempt citation, was an unwarranted and arbitrary invasion of an area of personal freedom immune from inquisition by political authorities. See *Watkins* v. *United States*, *supra*; *Sweezy* v. *New Hampshire*, *supra*; *United States* v. *Rumely*, *supra*, at 57; *National Labor Relations Board* v. *Essex*

Wire Co., 245 F. 2d 589 (9th Cir. 1957); *National Labor Relations Board* v. *National Plastics Products Co.*, 175 F. 2d 755, 760 (4th Cir. 1949).

Moreover, the order of the trial court requiring disclosure of petitioner's members, granted ostensibly to aid the state in its preparation for a trial on the merits, was entered before it could have been determined that such proceedings would ever be necessary.

The truth is that Alabama seeks, in these proceedings, to silence petitioner and its members. Its purpose is to eradicate effective opposition to continued governmental maintenance of racial segregation by insulating the state's unconstitutional policy against the reach of the Fourteenth Amendment. Obviously mere state opposition to petitioner's aims and purposes cannot vindicate the state power here asserted, for the reason free speech is constitutionally guaranteed is to preserve the freedom of those in dissent, no matter how weak and unpopular, under the circumstances and conditions now prevalent in Alabama.

The contempt citation and the punishment imposed therefor were vindicative and arbitrary, as indeed were the entire proceedings. Petitioner is subjected to heavy penalties for seeking to protect its constitutional rights. Petitioner's action in this cause poses no threat to the administration of justice in Alabama, and these proceedings present no valid issue of that nature. Here the state used its judicial machinery to try to convict petitioner for the ideas it espouses and lawfully seeks to implement. The state's aim was to ban petitioner's activities by the pretense of a judicial procedure, and that is the vice of these proceedings. There was lacking a fair and impartial hearing as required by the due process clause of the Fourteenth Amendment. The judgment below therefore cannot be sustained.

ARGUMENT

I.

The Fourteenth Amendment Prohibits the State From Interfering With the Activities of Petitioner.

Petitioner and its members seek the "economic, political, civic and social betterment of colored people and their harmonious cooperation with other peoples" [15] in Alabama and throughout the United States. In seeking to attain these objectives through the petitioner organization, individual members are exercising the right of free association for their mutual protection and for the more effective advancement of group interests—a right fundamental to our society. See *National Labor Relations Board* v. *Jones und Laughlin Steel Corp.*, 301 U. S. 1, 33.

In advocating and seeking the betterment of the Negro's status in America petitioner and its members are merely invoking their constitutionally protected rights of free speech and free association guaranteed under the due process clause of the Fourteenth Amendment. See *Pierce* v. *Society of Sisters*, 268 U. S. 510; *Sweezy* v. *New Hampshire*, 354 U. S. 234; *Grosjean* v. *American Press Co.*, 297 U. S. 233; *Times-Mirror Co.* v. *Superior Court*, 314 U. S. 252; *Pennekamp & Miami Herald Publishing Co.* v. *Florida*, 328 U. S. 331; *National Broadcasting Co., Inc.* v. *United States*, 319 U. S. 190; *Burstyn* v. *Wilson*, 343 U. S. 495; *DeJonge* v. *Oregon*, 299 U. S. 253; *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U. S. 123, 149, 183 (concurring opinions).

Solution of the American race problem—one of the great social issues of this era—is the cause to which petitioner and its members are devoting their efforts and energy. The right to free discussion of the problems of

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[15] This is quoted from Article 2, Constitution and By-laws of Branches of NAACP, March, 1956.

our society and to engage in lawful activities aimed at their alleviation is one of the unique and indispensable requisites of our system. See *Pennekamp* v. *Florida, supra,* at 346; *Palko* v. *Connecticut,* 302 U. S. 319, 327; *Stromberg* v. *California,* 283 U. S. 359, 369. The fact that some may view the ideas petitioner and its members espouse as ill-advised or even infamous is of no moment. For the right of freedom of association and free speech is accorded to dissident and unpopular minorities as well as those advocating ideas or engaging in activities of which those in power approve. See *Thornhill* v. *Alabama,* 310 U. S. 88; *Niemotko* v. *Maryland,* 340 U. S. 268; *Pierce* v. *Society of Sisters, supra; Hague* v. *Congress of Industrial Organization,* 307 U. S. 496; *Sweezy* v. *New Hampshire, supra; cf. Watkins* v. *United States,* 354 U. S. 178. The unimpaired maintenance of freedom of association and free speech is considered essential to our political integrity, see *Whitney* v. *California* (Justice Brandeis concurring), 274 U. S. 357, 376; *Stromberg* v. *California, supra;* and their safeguard in our basic law postulates a belief in the fundamental good sense of the American people.[16] In sum, petitioner and its members are exercising fundamental rights and engaging in activities basic to a free society.

It is clear that an individual who merely seeks vindication of his constitutional rights or improvement of his economic, social and political status by lawful means can-

[16] Justice Holmes' opinion in Abrams v. United States, 250 U. S. 616 at 630 is an expression of this idea: "But when men have realized that time has upset many fighting faiths, they may come to believe . . . that the ultimate good desired is better reached by a free trade in ideas." It was undoubtedly belief in the vital importance, both political and nonpolitical, of free speech which led this Court after some hesitation to construe the Fourteenth Amendment as incorporating against the states the First Amendment's proscription. *Compare* Patterson v. Colorado, 205 U. S. 454; Gilbert v. Minnesota, 254 U. S. 325; Prudential Insurance Co. v. Cheek, 259 U. S. 530 *with* Gitlow v. New York, 268 U. S. 652 and Stromberg v. California, 283 U. S. 359.

not be held guilty of illegal conduct. And the fact that such activity is taken in concert, of course, does not render it illegal. See *International Union* v. *Wisconsin Employment Relations Board*, 336 U. S. 245, 258.

While petitioner eschews partisan politics, it seeks to influence public opinion and affect the political structure to achieve its objectives. As such it is a political organization in the true sense, with its activities outside the area dissident and unpopular minorities, as well as those advo- of state interference absent compelling justification.[17] See *United States* v. *Rumely*, 345 U. S. 41; *Watkins* v. *United States*, *supra* at 250-251; *Wieman* v. *Updegraff*, 344 U. S. 148, 196; *Sweezy* v. *New Hampshire*, *supra*, at 265, 266.

In *Sweezy* v. *New Hampshire*, *supra*, at 250, 251, Mr. Chief Justice Warren said:

> Equally manifest as a fundamental principle of a democratic society is political freedom of the individual. Our form of government is built on the premise that every citizen shall have the right to engage in political expression and association. This right was enshrined in the First Amendment of the Bill of Rights. Exercise of these basic freedoms in America has traditionally been through the media of political associations. Any interference with the freedom of a party is simultaneously an interference with the freedom of its adherents. All political ideas cannot and should not be channeled into the programs of our two major parties. History has amply proved the virtue of political activity by minority, dissident groups, who innumerable times have been in the vanguard of political thought and whose programs were ultimately accepted. Mere unorthodoxy or dissent from the prevailing mores is not to be condemned. The absence of such voices would be a symptom of grave illness in our society.

[17] Petitioner also aids Negroes in vindicating their constitutional rights of freedom from discrimination in courts. In so far as these activities involve the federal courts, there is a further serious question of state jurisdiction to prohibit or interfere in any way. *See* Theard v. United States, 354 U. S. 278.

Mr. Justice Frankfurter in *Wieman* v. *Updegraff*, *supra*, characterized membership in a club of a political party as "a right of association peculiarly characteristic of our people," and joining such an organization as an exercise of rights of free speech and free inquiry. More recently in *Sweezy* v. *New Hampshire*, *supra*, Mr. Justice Frankfurter has given expression to the fundamental nature of activities in political organizations. There he said at page 266 that in the political and academic realm, "thought and action are presumptively immune from inquisition by the political authority." And at another point in the same opinion (265), Mr. Justice Frankfurter stated:

> The inviolability of privacy belonging to a citizen's political loyalties have so overwhelming an importance to the well being of our kind of society that it cannot be constitutionally encroached upon on the basis of so meager a countervailing interest of the State as may be argumentatively found in the remote, shadowy threat to the security of New Hampshire allegedly presented in the origins and contributing elements of the Progressive Party and in petitioner's relations to these.

That group activity plays a vital role in the enactment of legislation, conduct of party activity, formulation and execution of public policy in public administration and the protection of civil liberties is no longer open to question. See Latham, "The Group Basis of Politics," (1950). *passim*. Indeed, petitioner and organizations of its character at times bridge the academic and political fields, for they often seek to concretize the academician's social and economic abstractions into governmental action through their influence upon political parties and office holders. It is submitted, therefore, that these aforementioned principles are particularly apposite here, and that their application necessarily renders these proceedings invalid.

It should be noted that petitioner solicits membership dues and financial contributions to aid in carrying on these

activities. That alone, however, cannot place petitioner's activities outside the protection which the Fourteenth Amendment affords. *Murdock* v. *Pennsylvania*, 319 U. S. 105; *Follett* v. *McCormick*, 321 U. S. 573; *Burstyn* v. *Wilson*, *supra*.

While some nondiscriminatory regulation of petitioner's activities might be permissible, a blanket prohibition is beyond the state's power. See *Thomas* v. *Collins*, 323 U. S. 516; *Burstyn* v. *Wilson*, *supra*; *International Brotherhood of Teamsters* v. *Vogt, Inc.*, 354 U. S. 284. The restraining order entered in this cause constitutes such a forbidden regulation which cannot be sustained.

Nor can a blanket restraint be justified on the ground that petitioner's activities are at variance with some legitimate state policy. Cf. *Hughes* v. *Superior Court*, 339 U. S. 460. For such a proscription as here imposed would seem to constitute a prior restraint upon the exercise of rights of free speech and association forbidden by the Fourteenth Amendment. See *Near* v. *Minnesota*, 283 U. S. 697; *Kingsley Books* v. *Brown*, 354 U. S. 436, 445; *Roth* v. *United States*, 354 U. S. 476, 496, 497.

The sole legal basis urged for the state's interference with petitioner's activities was its failure to register with the Secretary of State as a foreign corporation doing business in Alabama. See Title 10, Sections 192, 193, 194, Code of Alabama, 1940. There can be no doubt that the state cannot upon this pretext justify interference with free speech and freedom of association. A mere semblance of a state interest is not sufficient to justify invasion of the rights of free association and free speech. See *United States* v. *Rumely*, *supra*; *Watkins* v. *United States*, *supra*, at 198. And, it is submitted, the state cannot interpose its policy or procedure for the purpose of defeating or infringing constitutionally secured federal rights. See *Hill* v. *Florida*, 325 U. S. 538; *Garner* v. *Teamster C. H. Union*, 346 U. S. 485, 500. Restriction upon exercise of petitioner's consti-

tutionally protected right to advocate and seek by lawful means equal rights for Negro Americans, therefore, cannot be justified on the ground that compliance with state registration statutes was being sought, particularly in light of petitioner's offer to so comply and waive its asserted immunity to the state law.

The order to disclose the names and addresses of petitioner's members entered by the court below in the supposed exercise of its equity power and the use of pre-trial discovery for this purpose was sustained on the merits by the Alabama Supreme Court (R. 23). Aside from being a gross misuse of the power of equity and pre-trial discovery procedures (see *infra* pages 44 *et seq.*), this order was as open and direct a violation of the rights of petitioner and its members to free speech and freedom of association as directly barring petitioner's activities without more. This, we submit, the state cannot do whether acting through its legislative, executive or judicial arm. See *Sweezy* v. *New Hampshire, supra; Watkins* v. *United States, supra.*

In Alabama, at present, adverse sentiment to desegregation had been manifested by both state and local officials and powerful forces in the dominant majority. Petitioner's members constitute a weak and unpopular minority—a minority defined not so much by race as by the ideas they espouse. Disclosure of petitioner's members or threat of such disclosure will necessarily tend to curb the activities of petitioner and its members and weaken the strength and effectiveness of the organization in pursuit of its objectives in Alabama. See Mr. Justice Black concurring in *United States* v. *Rumely, supra; cf. Sweezy* v. *New Hampshire, supra.*

The purported justification for the request for disclosure, and the order requiring it, was that the state needed petitioner's membership list to secure facts to prove that petitioner had been doing business in the state

But the factors which determine that question concern what activities petitioner has engaged in, not the identification of its members and contributors. See *DeJonge* v. *Oregon*, *supra*; cf. *Wieman* v. *Updegraff*, *supra*. A simulated state interest will no more suffice to justify this type of invasion of the Bill of Rights than those condemned in *Sweezy* v. *New Hampshire*, *supra*; *Watkins* v. *United States*, *supra*, and *United States* v. *Rumely*, *supra*. Indeed, since here the judicial process is involved, the requirements of due process are, if anything, more stringent.

Because unpopular organizations lawfully engaged in pursuit of their activities are subject to coercive influences effectively restricting exercise of their rights, the National Labor Relations Board and the courts have held the right of self-organization under the Labor Management Relations Act violated where an employer sought disclosure of union membership and activities of individual employees. See, e.g., *National Labor Relations Board* v. *National Plastics Products Co.*, 175 F. 2d 755, 760 (4th Cir. 1949); *Texarkana Bus Co.* v. *National Labor Relations Board*, 119 F. 2d 480 (6th Cir. 1941). In *National Labor Relations Board* v. *Essex Wire Co.*, 245 F. 2d 589 (9th Cir. 1957), the court upheld the order of the National Labor Relations Board that the demand by management for surrender of executed union membership cards was an unfair labor practice. There it said at page 592:

> Assuming that the cards were demanded in an effort to enforce the rule against union campaigning on company time, and that the foreman intended to return the cards at the end of the day, we are nevertheless of the view that the demand was coercive with respect to the rights specified in § 7 of the act. Possession of such cards, even for a temporary period, would enable management to inform itself as to the progress being made in campaigning for a then-unrepresented union. It would also make it possible for management to exercise surveillance over the union affiliations and activities of individual

> employees. Whether the company would be disposed to make such use of the cards is beside the point. As long as the opportunity is present, employees may have a real fear that this would be done. Such fear could well influence their inclination to execute such cards.
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> . . . In our view, a demand for surrender of membership cards in a union not then established in the plant is at least as coercive as such remarks and questioning.
>
> We are therefore of the view that the demand . . . was an unfair labor practice. . . .

While inquiries about union strength are permissible, inquiries about the union affiliation of individual employees or the union activities of union leaders are prohibited as an unfair labor practice. *National Labor Relations Board* v. *Minnesota Mining and Mfg. Co.*, 179 F. 2d 323 (8th Cir. 1950); *In re Grater Mfg. Co.*, 111 NLRB No. 20 (1955).

In *Brotherhood of Railway and Steamship Clerks* v. *Virginia Ry. Co.*, 125 F. 2d 853, 858 (4th Cir. 1942), the court said: "[C]ertainly the [National Mediation] Board should no more have given publicity to the names of those who had given authorization cards to the [union] and thus have subjected them to the danger of reprisal or discrimination, than it should have disclosed the votes of those participating in an employees' election."

While these are Congressional statutes and hence demonstrate a legislative condemnation of interference with the group activity sanctioned, the basis for the legislative proscription is the plenary power of Congress over interstate commerce. Here the rights to which the group activity is directed are rights created and protected by the Fourteenth Amendment itself. It follows necessarily, therefore, that state interference with the exercise of these rights cannot be permitted. Thus, the reasons which condemned enforced exposure of union members as violating the

national Labor Management Relations Act forbid disclosure of petitioner's members names; the coercive effect and the unlawful interference with speech and association are the same. Disclosure could serve no other purpose.

As the state is barred from inquiries concerning an individual's partisan political affiliation, see *Sweezy* v. *New Hampshire, supra*, it is likewise barred from inquiries concerning his stand on political issues or affiliations which would reveal what these political views are—e.g., does he support civil rights legislation? or believe that curbs on immigration should be relaxed? or what position does he hold on public power, or on repeal of Taft-Hartley? or what are his beliefs on segregation? or does he belong to a group which is opposed to segregation? To borrow a phrase from Mr. Justice Frankfurter in *Sweezy* v. *New Hampshire, supra* such inquiries could only act to "check the ardor and fearlessness" of the individual in the active participation in activities designed to solve great public issues of importance to his generation. This order seeks to effect an invalid intrusion into an area of individual and group freedom from which the due process clause of the Fourteenth Amendment bars the state.

To paraphrase Mr. Justice Black, concurring in *United States* v. *Rumely, supra*, at 57, once the state can demand of petitioner the identification of its members, the spectre of the police will look over the shoulder of every member who belongs to the organization. A contribution or purchase of a membership today may result in a subpoena tomorrow. The consequences of such disclosure would be necessarily coercive, and freedom of association as we know it would disappear.

There are, of course, instances where invasion of free speech is permitted. Where questions of loyalty or subversion are involved, such invasion has been permitted. See

Dennis v. *United States*, 341 U. S. 494. In those cases the intrusion was permitted because it was found that there was a rational basis for inquiry into the individual's membership in subversive organizations in order to protect the integrity of public employment, *Garner* v. *Board of Public Works*, 341 U. S. 716; or to keep interstate commerce free from obstruction, *American Communications Association* v. *Douds*, 339 U. S. 382; or to protect the state from violent overthrow, *Dennis* v. *United States*, *supra*. Further, when the activity involved offends some valid state policy, state interference has been allowed. See *Hughes* v. *Superior Court*, *supra*.

But these cases have no application here. Petitioner is engaged in no acts of disloyalty or subversion. It merely seeks the eradication of state imposed racial segregation and discrimination. Since the Constitution forbids such discrimination, justification for restricting petitioner's activities, although at war with avowed state policy, is totally lacking. As this Court held in *Garner* v. *Teamsters, C. & H. Union*, *supra*, federal power constitutionally exerted "cannot be curtailed, extended or circumvented" merely because some state policy or doctrine is opposed to it. Indeed, since petitioner and its members were exercising and seeking to secure only those rights guaranteed by the federal Constitution, these activities are impliedly protected against the erection of state burdens which would impair or nullify those federal rights. See *Hill* v. *Florida*, *supra*.

There has long been full agreement on this Court that interference with freedom of speech and freedom of association by governmental authority cannot be justified, except where compelling necessity requires the protection of some competing societal interest of substantial importance. This is merely recognition that some limitation of these freedoms may be necessary in an organized society.

Where the lines of demarcation should be drawn, however, has been the subject of much controversy, and this Court's decisions on the reach of the First Amendment guarantees are difficult to harmonize under any single formula. Compare *Martin* v. *Struthers*, 319 U. S. 141, and *Murdock* v. *Pennsylvania*, *supra*, with *Follett* v. *McCormick*, *supra*, and *Breard* v. *Alexandria*, 341 U. S. 622 (itinerant peddlers of religious literature); *Zorach* v. *Clauson*, 343 U. S. 306, with *McCollum* v. *Board of Education*, 333 U. S. 203 (released time); *Kovacs* v. *Cooper*, 336 U. S. 77, with *Saia* v. *New York*, 334 U. S. 558 (use of sound trucks); *Terminiello* v. *Chicago*, 337 U. S. 1, and *Feiner* v. *New York*, 340 U. S. 315 (right of police authorities to interfere with free speech as likely to produce a breach of the peace). Each of these decisions turns upon an ultimate appraisal of the facts. The cases, however, seem amenable to a loose classification, viz., interference with exercise of these rights has been prohibited except where this Court has found the restriction necessary for the preservation of some important societal interest. See *Breard* v. *Alexandria*, *supra*; *Feiner* v. *New York*, *supra*. Where no such importance has been discovered, however, the restriction has been struck down. See *Saia* v. *New York*, *supra*.

Until such time as the state has a rational basis to support regulation of the activities of petitioner and its members as necessary for the prevention of some substantive evil which the state has a right to prevent, it cannot interfere by legislative enactment or judicial decree with the activities of petitioner and its members in their effort to secure social, economic or political reform to which petitioner and its members are committed. See *Sweezy* v. *New Hampshire*, *supra*; *Thomas* v. *Collins*, *supra*; cf. *Gitlow* v. *New York*, 268 U. S. 652; *American Communications Assn.* v. *Douds*, *supra*; *United Public Workers* v. *Mitchell*, 330 U. S. 75.

Here petitioner asserts its own right and the rights of its members to freedom from interference with the exercise of precious constitutional liberties. By enjoining its continued activity, Alabama has deprived petitioner of freedom of speech and freedom of association and of property in the continued receipt of the dues and contributions of its members. Petitioner has standing to assert its interest as an entity, see *Joint Anti-Fascist Refugee Committee* v. *McGrath, supra* (Mr. Justice Frankfurter's concurring opinion at 149); *Pierce* v. *Society of Sisters, supra;* and may vindicate the constitutional right of freedom of speech and freedom of association of its members as well. See *Joint Anti-Fascist Refugee Committee* v. *McGrath, supra* (Justice Jackson's concurring opinion at 183); *Watkins* v. *United States, supra* at 250, 251. This Court has more than once permitted a litigant to safeguard constitutional rights of persons far more removed than is petitioner in relation to its members. See *Pierce* v. *Society of Sisters, supra; Barrows* v. *Jackson*, 346 U. S. 249; *Truax* v. *Raich*, 239 U. S. 33.

II.

Purporting to Enforce Its Foreign Corporation Registration Statutes, the State Has Here Acted to Prohibit Petitioner and Its Members from Exercising Rights Guaranteed by the Fourteenth Amendment.

The purported basis for the state's action was failure of the petitioner to file with the Secretary of State its Articles of Incorporation and designate an agent for service of process in accord with Title 10, Sections 192, 193 and 194 of the Code of Alabama, 1940 and Article 12, Section 232, Constitution of Alabama of 1901. This failure and petitioner's continuing to engage in activities designed to secure constitutional rights of Negroes in the state was allegedly causing irreparable injury to the property and

civil rights of citizens of the state. On the basis of the bare unsupported allegations in the complaint—which to an objective and unbiased appraiser would hardly furnish the basis for exercise of equity's extraordinary power—petitioner was placed under sweeping restraint without hearing.

The pleading of the state registration statutes was a pretext to give a facade of legality to the state's unlawful and unwarranted interference with the lawful activities of petitioner and its members in violation of the Fourteenth Amendment's command. The purpose of Title 10, Sections 192, 193 and 194 is to compel foreign corporations to submit to the jurisdiction of the courts of the state as a prerequisite to invoking equal protection of the laws in the enforcement of intrastate obligations. *Jones* v. *Martin*, 15 Ala. App. 675, 74 So. 761 (1917). It is designed to protect property interests of Alabama citizens. *Jefferson Island Salt Co.* v. *Longyear Co.*, 210 Ala. 352, 98 So. 119 (1923). See *Pepperell Mfg. Co.* v. *Alabama Nat'l. Bank*, 261 Ala. 665, 75 So. 2d 765 (1954); *Cadden-Allen Inc.* v. *Trans-Lux News*, 254 Ala. 400, 48 So. 2d 428 (1950). Here the state knew where petitioner's main office was located. It so recites it in the complaint, and there is no showing that any Alabama citizens had sought to bring an action against petitioner in the state court and had been unsuccessful because of petitioner's failure to comply with the statutes. In short, petitioner's failure to register had caused none of the harm or deprivations to Alabama citizens which the law was designed to eliminate.

There is doubt as to the statute's application to petitioner, since petitioner is engaged in interstate commerce. Cf. *Spector Motor Service* v. *O'Connor*, 340 U. S. 602. If the state's thesis is to be accepted, however, petitioner has been continuously present in Alabama since 1918 when its first Branches were chartered in Selma and Montgomery (R. 6-7). Since that time it has continuously engaged in activities seeking to protect Negroes against denial of rights

because of race and to remove barriers of discrimination based upon color. In the course of that effort, petitioner has assisted in prosecuting or defending in courts litigation in which such questions were raised. Among these cases are *Mitchell* v. *Wright*, 154 F. 2d 580 (5th Cir. 1946); *Gayle* v. *Browder*, 142 F. Supp. 707 (M. D. Ala. 1956), aff'd, 352 U. S. 903. The state's enforcement authorities have failed to proceed against petitioner from 1918-1956, and from this failure there is at least a presumption that they did not construe the registration statute as being applicable to petitioner.

The form of remedy sought by the state is a conclusive demonstration that compliance with the statute was not the state's purpose. The state did not seek to require petitioner to register, as the statute provides, but to restrain all of its activities and secure its ouster from the state. The decree entered barred compliance with the statute's terms, and petitioner's offer to comply, which should have ended the lawsuit, was not allowed by the court.

In *quo warranto* proceedings to forfeit corporate charters (which "award relief of like character to that sought by injunction . . .", *Birmingham Bar Association* v. *Phillips and Marsh*, 239 Ala. 650, 658, 196 So. 725 (1940)) Alabama courts have been disinclined to decree forfeiture for mere technical violations, *State* v. *Oden*, 248 Ala. 39, 26 So. 2d 550 (1946); or for violations which are not substantial or clear, *State ex rel. Johnson* v. *Southern Building and Loan Association*, 132 Ala. 50, 57, 31 So. 375 (1902); moreover, it has been required that the violation be willful and shown to have prejudiced a citizen of the state or other person. *State ex rel. Scott* v. *United States Endowment And Trust Co.*, 140 Ala. 610, 620, 37 So. 442 (1903).

Further, it is clear from the state's motion for an order requiring the disclosure of petitioner's membership and the court's order to that effect that what actually was-

sought was an effective curb upon petitioner's activities. If petitioner had complied with the state's law, which is the purported basis for these proceedings, it would not be required to furnish the state any list of its members.[19] The

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[19] Title 10, Sections 192, et seq., are as follows:

§ 192. *Foreign corporation must file instrument of writing designating agent and place of business in this state.*—Every corporation not organized under the laws of this state shall, before engaging in or transacting any business in this state, file with the secretary of state a certified copy of its articles of incorporation or association and file an instrument of writing, under the seal of the corporation and signed officially by the president and secretary thereof, designating at least one known place of business in this state and an authorized agent or agents residing thereat; and when any such corporation shall amend its articles of incorporation or association, or shall abandon or change its place of business as designated in such instrument, or shall substitute another agent or agents for the agent or agents designated in such instrument of writing, such corporation shall file a new instrument of writing as herein provided, before transacting any further business in this state.

§ 193. *Where filed and fee for filing.*—Such instrument when filed by a corporation engaged in any business of insurance must be filed in the office of the superintendent of insurance, and when filed by a corporation engaged in any other business than that of insurance must be filed in the office of the secretary of state, and there shall be paid at the same time for filing such instrument to the officer with whom the same is filed the sum of ten dollars for the use of the state. (1919, p. 831.)

§ 194. *Unlawful for foreign corporation to transact business in this state before declaration filed; penalty.*—It is unlawful for any foreign corporation to engage in or transact any business in this state before filing the written instrument provided for in the two preceding sections; and any such corporation that engages in or transacts any business in this state without complying with the provisions of the two preceding sections shall, for each offense, forfeit and pay to the state the sum of one thousand dollars.

§ 195. *Unlawful to act as agent of foreign corporation before such declaration is filed; penalty.*—It is unlawful for any person to act as agent or transact any business, directly or indirectly, in this state, for or on behalf of any foreign corporation which has not designated a

statute merely requires furnishing the Secretary of State with Articles of Incorporation and naming an agent to accept service of process. Thus, in a lawsuit purportedly based upon petitioner's failure to comply with the state law, petitioner is ordered to do more than the statute requires. Indeed, if the justification for these proceedings was petitioner's failure to register, that justification was removed before the contempt adjudication by petitioner's tender of compliance with state law.

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known place of business in this state and an authorized agent or agents residing thereat, as required in this article; and any person so doing shall, for each offense, forfeit and pay to the state the sum of five hundred dollars.

§ 196. *Foreign corporations, their agents, officers, etc., contracting or doing business in state without license, penalty for.*—Any corporation or any person acting as agent, servant, or officer of such foreign corporation or nonresident corporation or corporation organized under or by authority of the laws of any state or government other than the State of Alabama, who shall make or attempt to make any contract, agreement, undertaking, or engagement with, by, or in the name of or for the use or benefit of any such corporation without a license authorizing such corporation to do business in this state, or after such license shall have been cancelled, shall be guilty of a misdemeanor, and, on conviction, shall be fined not less than one hundred dollars, nor more than one thousand dollars, and may also be imprisoned in the county jail or sentenced to hard labor for the county for not more than twelve months, one or both, at the discretion of the jury trying the case.

§ 197. *Solicitor must enforce penalties; commissions.*—Every penalty provided for in this article shall be sued for and recovered in the name of the State of Alabama, by the solicitor of the circuit or county in which the offense is committed; and when collected, must be paid by the solicitor into the state treasury for the use of the state, less twenty-five percent, to be retained by such solicitor for his services. The attorney-general shall represent the state in such actions carried to the supreme court, and for his services therein is entitled to one-half the commissions herein allowed to the solicitor.

§ 198. *Exceptions.*—The provisions of this article do not apply to corporations organized under the laws of the United States; nor to corporations engaging in or transacting business of interstate commerce only within the state.

Further evidence of the real purpose of these proceedings is demonstrated by the scheduling of the hearing date on petitioner's motion to dissolve after hearing and determination of the state's motion for pretrial disclosure of petitioner's members. The motion to dissolve, not having been heard, and petitioner having been adjudged in contempt, petitioner is precluded from contesting the validity of the injunction now outstanding against it, until it has purged itself of contempt. *Jacoby* v. *Goetter Weil Co.*, 74 Ala. 427 (1883). The burdensome contempt penalty and the equally burdensome alternative of purging itself of contempt and disclosing its members, in effect places petitioner in position of not being able to challenge the restraining order. Thereby the temporary restraining order, entered *ex parte*, is rendered final and permanent. That this result was intended is hardly open to doubt.

The penalties for violation of the statutes here involved are criminal, and it is clear under Alabama law as elsewhere that equity will not assume jurisdiction to enforce statutory penalties, *Jarrett* v. *Hagerdorn*, 237 Ala. 66, 185 So. 401 (1939); or assume jurisdiction where a plain and adequate remedy exists at law. *Farmers Savings Bank* v. *Murphee*, 200 Ala. 574, 76 So. 932 (1917); *Hogan* v. *Scott*, 186 Ala. 310, 65 So. 209 (1914); *Hardeman* v. *Donaghey*, 170 Ala. 362, 54 So. 172 (1911); *Gulf Compress Co.* v. *Harris Cortner & Co.*, 158 Ala. 343, 48 So. 477 (1909); *Youngblood* v. *Youngblood*, 54 Ala. 486 (1875); *McCullough* v. *Walker*, 20 Ala. 389 (1852); *Herring* v. *M'Elderry*, 5 Port. 161 (1837). The state alleges "irreparable" injury, but no facts are asserted to warrant giving credence to this allegation. Thus, despite the fact that under principles of equity jurisdiction, no basis for equity intervention was shown, the trial court nonetheless asserted its equity power and proceeded to grant injunctive relief.

These factors all demonstrate that the proceedings below were deliberately and premeditatedly designed and utilized to impose restrictions and regulations upon exercise of rights of freedom of association and freedom of speech of petitioner and its members and lawful activities aimed at securing the constitutional rights and privileges of Negro Americans. For the reasons set forth in Part I hereof the proceedings below are, therefore, fatally defective and should be reversed.

III.

Taken As A Whole the Proceedings Were Lacking in Fundamental Fairness Essential to Our Concept of Due Process of Law.

1. The entire proceedings in the trial court and in the State Supreme Court are lacking in objectivity and impartiality which is the essence of due process. At no place in these proceedings does the litigation below present a picture of a court seeking to strike a fair balance between the interests of contending parties. Judicial discretion and interpretation of the rules of state procedure were here involved—in general, matters of state law. But where the exercise of judicial discretion and the interpretation of rules of procedure are at variance with fundamental notions of fairness, there is a failure to accord a hearing consonant with requirements of due process guaranteed under the Fourteenth Amendment. See *Walker* v. *Hutchinson*, 352 U. S. 112; *Betts* v. *Brady*, 316 U. S. 455; *Wolf* v. *Colorado*, 338 U. S. 25. Cf. *Galvan* v. *Press*, 347 U. S. 522, 530.

The state's complaint, even assuming the truth of all the allegations made, presents no such extraordinary set of cir-

cumstances as to warrant the exercise of equity jurisdiction. Title 10, Sections 194-196, Code of Alabama, 1940, which provides statutory penalties for a corporation doing business in violation of Alabama law, could have been invoked against petitioner for the alleged violation of the state's registration law. Of course, the state alleges that these remedies at law were inadequate. In view of the fact that the organization had chartered affiliates operating in Alabama since 1918, and had been operating its Southeast Regional Office in Birmingham since 1951 without protest by state authorities, even conceding a case for equity jurisdiction, *ex parte* proceedings seem entirely inappropriate [20] since the purpose of such proceedings is to issue restraints of short duration to maintain the *status quo*. Indeed, a restraining order issued *ex parte* is such a drastic interference with personal rights that it should be carefully utilized only in appropriate situations, else its use is of doubtful constitutionality. A restraining order, which alters rather than preserves the *status quo*, which is entered without the presence of those pressing considerations of possible irreparable injury before hearing can be had, which is entered because of violation of the law but enjoins compliance, and which is extended as here for an unreasonable length of time without hearing, fails to meet minimum constitutional requirements of notice and hearing. Cf. Rule 65, Federal Rules of Civil Procedure; *Sims* v. *Green*, 160 F. 2d 512 (3d Cir. 1947); *Southard & Co.* v. *Salinger*, 117 F. 2d 194 (7th Cir. 1941); *Benitez*

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[20] No question is raised, or indeed could be raised at this late date, concerning the trial court's authority in the abstract to issue temporary restraining orders ex parte in appropriate situations. *See* Rochell v. Florence, 236 Ala. 313, 182 So. 50 (1938).

v. *Anciani*, 127 F. 2d 121 (1st Cir. 1942); cert. denied 317 U. S. 699; *Mongogna* v. *O'Dwyer*, 204 La. 1030, 16 So. 2d 829 (1943); *Griffith* v. *State*, 19 S. W. 2d 377 (Tex. Civ. App. 1929); *Kittaning Brewing Co.* v. *American Natural Gas Co.*, 224 Penna. 129, 73 Atl. 174 (1909).

It is doubtful, moreover, that such proceedings would have been tolerated but for the fact that this petitioner was the defendant. The personal bias of the trial judge is clearly manifested in the March 4, 1957 issue of the *Montgomery Advertiser* in an article entitled "Off The Bench", where the trial judge said " 'I speak for the White Race, my race, because today it is being unjustly assailed all over the world. * * * The integrationists and mongrelizers do not deceive any person of common sense with their pious talk of wanting only equal rights and opportunities for other races. Their real and final goal is intermarriage and mongrelization of the American people." This bias is further evidenced in a speech delivered by him on July 11, 1957, before the Baptist Laymen in Alabama. The speech was reproduced in full in the Congressional Record of July 22, 1957. Two short excerpts only are necessary to reveal its character. There the judge said:

> Many of our religious organizations, the NAACP, and it has the financial and moral backing of the American Jewish Congress in New York, committees of labor unions, and the Supreme Court of the United States, and both of the Nation's chief political parties, are all working together to achieve complete integration of the races, and this we know is the first step toward amalgamation, the consolidating and fusing into 1 race the 2, the white and black races. A 5888, 5889, 103 Cong. Rec. (85th Cong. 1st Session) 1957.

and

> It is almost unbelievable, yet it is true, that the Presbyterian Church in one of our Southern States,

> underwrote the race mixing activities of the *Communist*-dominated NAACP . . . (italics supplied) *Ibid.*[21]

With a judge so personally committed, it can hardly be said that petitioner was tried in an objective forum as due process requires.

Under Alabama law when an injunction has been issued a motion to dissolve will lie and tests the equity of the bill, see *Corte* v. *State*, 259 Ala. 536, 67 So. 2d 782 (1953), and an appeal therefrom lies directly to the State Supreme Court. See Title 7, Section 757, Alabama Code of 1940; *Francis* v. *Scott*, 260 Ala. 590, 72 So. 2d 93 (1954). Petitioner was put under a sweeping injunction without a hearing. Its first responsive pleadings to the state's bill were a motion to dissolve and demurrers to the bill filed on July 2. Hearing on these pleadings were set for July 17. When the state subsequently filed, on July 5, a motion for pretrial discovery, however, hearing on its motion was set for July 9. The setting of hearing dates is in the realm of judicial discretion, but it hardly seems a fair or objective determination to give priority to a motion filed subsequent to that which will grant a defendant its first opportunity to a hearing to test the equity of a restraining order without notice and hearing.

After the state's motion was granted and petitioner was ordered to give to the state a list of its members, petitioner sought to demonstrate the irrelevance of the identity of its members to any germane issue in these proceedings by

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[21] The bill of complaint makes no charge of subversion, and petitioner challenges the state to prove the validity of such charge if it can. However else petitioner may be characterized, no responsible authority has ever leveled the charge of subversion.

filing an answer revealing in full its defense and offering to waive its rights not to register. Despite this, the court refused to vacate its order, and petitioner was put in the dilemma of either waiving its constitutional rights, as a condition precedent to a hearing on the merits in the Alabama courts and thereby exposing its members to danger, or being adjudged in contempt and thereby losing its standing to vindicate in the Alabama courts its rights to continue its activities free of state interference, until it had purged itself of contempt or the validity of contempt adjudication had been settled by higher authority. See *Jacoby* v. *Goetter Weil & Co.*, *supra*, on which the State relies and with which interpretation the court concurred (see Brief in Opposition, p. 20). The alternatives available posed such unconstitutional conditions that petitioner was in effect denied access to Alabama courts to litigate its claims as to the invalidity of the court's restraining order.

The magnitude and vindictiveness of the fine levied on the adjudication of contempt, in total disregard of the non-profit character of the organization and its paucity of funds, is another evidence of the harsh treatment afforded petitioner and the absence of concern for petitioner's interest. Cf. *United States* v. *United Mine Workers*, 330 U. S. 258.

The fine itself was excessive and punitive and not warranted by the facts. Petitioner is a non-profit corporation with limited resources. Apparently the court believed otherwise, but there are no facts in the record or outside to justify that belief. It was clear that petitioner's refusal to obey the court's order was based upon its good faith belief that to do so would cause serious injury to its members and itself and would constitute a waiver of vital constitutional rights. The restraining order was being scrupu-

lously obeyed. Hence, there was no such public defiance as might give rise to any apprehension of a general undermining of judicial authority. Cf. *United States* v. *United Mine Workers of America, supra.*

On July 25, in the order adjudging petitioner guilty of contempt, the court ordered, "adjudged and decreed . . . as punishment for its said contempt, the said National Association for the Advancement of Colored People, be and it is hereby fined the sum of $10,000.00". On July 31, in its order adjudging petitioner guilty of further contempt, the order reads: "as punishment for its said contempt, the said National Association for the Advancement of Colored People, be and it is hereby fined the sum of $100,000."

If the order was made to induce obedience as in the nature of civil contempt, see *Ex parte Hill*, 229 Ala. 501, 158 So. 531 (1935); *Ex parte King*, 263 Ala. 487, 83 So. 2d 241 (1955), it is clear that a more reasonable fine would have been sufficient. The inordinate amount of the fine and the language in the order itself designating it as punishment for what had been done would seem to render this criminal rather than civil contempt under definition of Alabama authorities cited above. This is the prevailing rule and was the Alabama rule until this case reached the Alabama Supreme Court. The State Supreme Court in this case, however, set a new yardstick making the demarcation between civil and criminal contempt (R. 23).[22] Whether it is classified as civil or criminal contempt, the fine was levied without consideration of the fact that the consequences of petitioner's disobedience would not adversely undermine judicial authority, that the disobedience occurred to preserve constitutional rights, and that petitioner is a

[22] Since Title 13, Sec. 143, Alabama Code of 1940 limits court's powers to punish for criminal contempt to a fine of $50.00 or jail for 5 days, decision as to which category this adjudication could be classified was crucial.

non-profit corporation with limited financial resources. Cf. *United States* v. *United Mine Workers of America, supra.* There is some doubt as to whether petitioner can purge itself of contempt even if it could afford to pay the fine levied.

The Supreme Court of the State, although expressly recognizing certiorari as an appropriate remedy in denying petitioner's motion to stay the order of the trial court (91 So. 2d 220), after the petition was filed, denied relief on the ground that certiorari is not the proper remedy (R. 23). Thus, petitioner contends that it was denied a fair and impartial hearing in both state tribunals.

2. Since decision in this case, the rules of civil procedure of Alabama have been under comprehensive study and the State Commission on Judicial Reform has recommended "adoption of the Federal Rules of Civil Procedure to the Alabama practice" to insure greater liberality and freedom in litigation and avoid stringent technicalities of pleading and practice to meet the ends of justice. Skinner, "Alabama's approach to A Modern System of Pleading and Practice," 20 F. R. D. (Adv. pp. 119, 137, 1957).

At the time of these proceedings, although some of the federal rules in respect to pretrial discovery by interrogatories had been superimposed on Alabama procedure with adoption of Act 375, codified as Title 7, Sections 474(1)-474(18) (Supp. 1955), Title 7, Section 426, Alabama Code of 1940 governed disposition of the state's motion. Section 426 is a part of the restrictive and outmoded state procedure which the State Commission on Judicial Reform is seeking to jettison.

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[23] The new proposals have been approved by the lower House in the Alabama legislature, but approval has not as yet been given by the Senate.

A common feature of even the liberal discovery procedures, however, is a requirement that "good cause" be shown to obtain an order for discovery or inspection of private documents or papers. See, e.g., Federal Rule 34; 16 Ariz. Rev. Stat. R. 134 (1956); Ark. Stat. Ann. #28-356 (Supp. 1955); Colo. Rev. Stat. R. Civ. P. 34 (1953); 13 Del. Code Ann. Ch. Ct. R. 34 (1953); 30 Fla. Stat. Ann. R. Civ. P. 1.28 (1956); La. Rev. Stat. #13.3782 (Supp. 1954); Mo. Ann. Stat. #510.030 (1952); Wash. Ct. R. 34.

And this requirement has been reinforced by judicial decisions. See e.g., *State* v. *Hall*, 325 Mo. 102, 27 S. W. 2d 1027 (1930); *State* v. *Aronson*, 361 Mo. 535, 235 S. W. 2d 384 (1950); *Kullman, Salz & Co.* v. *Superior Court*, 15 Cal. App. 276, 114 P. 589 (1911); *Toth* v. *Bigelow et al.*, 12 N. J. Super. 359, 79 A. 2d 720 (1951); *Shell Oil Co.* v. *Superior Court of Los Angeles County et al.*, 109 Cal. App. 75, 292 P. 531 (1930); *Martin* v. *Capital Transit Co.*, 170 F. 2d 811 (C. A. D. C. 1948); *Carden* v. *Ensminger*, 329 Ill. 612, 161 N. E. 137 (1928); *Firebaugh* v. *Traff*, 353 Ill. 82, 186 N. E. 526 (1933); *State* v. *Flynn*, 257 S. W. 2d 69 (S. Ct. Mo. 1953); *Gebhard* v. *Isbrandtsen Co.*, 10 F. R. D. 119 (S. D. N. Y. 1950); 7 Cyclopedia of Federal Procedure, 609-610 (3rd ed., 1951) and cases cited. Cf. *Ex parte Darring*, 242 Ala. 621, 70 So. 2d 564 (1942); *Steverson* v. *W. C. Agee & Co.*, 13 Ala. App. 448, 70 So. 298 (1915).

As part of the requirement of good cause, many courts require that the party seeking discovery demonstrate that he cannot obtain the information sought by means other than discovery. *Szubinski* v. *Commercial Sash & Door Co.*, 15 F. R. D. 274, 276 (N. D. Ill., 1953); *Goldner* v. *Chicago & N. W. Ry. System*, 13 F. R. D. 326 (N. D. Ill., 1952); *Gebhard* v. *Isbrandtsen Co., supra; Drake* v. *Herman*, 261 N. Y. 414, 185 N. E. 685 (1933); *Patterson* v. *Southern Ry. Co.*, 219 N. C. 23, 12 S. E. 2d 652 (1941); see 4 Moore's Federal Practice, 2451 (2d ed. 1950), and cases cited.

Some jurisdictions with liberal pre-trial discovery procedures require that a party seeking the production of documents demonstrate that the papers sought are *relevant* to some material issue in the case. See, *e.g.*, *Royster* v. *Unity Life Ins. Co.*, 193 S. C. 468, 8 S. E. 2d 875 (1940); *Flanner* v. *St. Joseph Home for Blind Sisters*, 227 N. C. 342, 42 S. E. 2d 22 (1947); *Thomas* v. *Trustees of Catawba College*, 242 N. C. 504, 87 S. E. 2d 913 (1955); *Carden* v. *Ensminger*, *supra*; *Firebaugh* v. *Traff*, *supra*; *State* v. *Flynn*, *supra*; *Jacobs* v. *Jacobs*, 50 So. 2d 169 (S. Ct. Fla. 1951); *Chandler* v. *Taylor*, 234 Iowa 287, 12 N. W. 2d 590 (1944); *Patterson* v. *Southern Ry.*, *supra*; *Frank* v. *Marquette University*, 209 Wis. 372, 245 N. W. 145 (1932); *Hawley Products Co.* v. *May*, 314 Ill. App. 537, 41 N. E. 2d 769 (2d Dist. 1942); *Haffenberg* v. *Windling*, 271 App. Div. 1057, 69 NYS 2d 546 (4th Dept. 1947); *White* v. *Skelly Oil Co.*, 11 FRD 80 (W. D. Mo. 1950); *Woods* v. *Kornfeld*, 9 FRD 678 (M. D. Pa. 1950); Anno., 58 ALR 1263 and cases cited; 7 Cyclopedia of Federal Procedure 641 and cases cited; *Steverson* v. *W. C. Agee & Co.*, *supra*; *State* v. *Hall*, *supra*; *State* v. *Aronson*, *supra*; *McClatchy Newspapers* v. *Superior Court*, 26 Cal. (2d) 386, 159 P. 2d 944 (1945); *Toth* v. *Bigelow*, *et al.*, *supra*; *Eilen* v. *Tappin's Inc.*, *et al.*, 14 N. J. Super. 162, 81 A. 2d 500 (1951); *Shell Oil Co.* v. *Superior Court of Los Angeles County*, *et al.*, *supra*; *Los Angeles Transit Lines* v. *Superior Court*, 119 Cal. App. 2d 465, 259 P. 2d 1004 (1953). Cf. *Alabama G. S. R. Co.* v. *Taylor*, 129 Ala. 238, 29 So. 673 (1901); *Ex parte Rowell*, 248 Ala. 80, 26 So. 2d 554 (1946). The burden of proving relevancy must be met by factual allegations showing that the papers sought are pertinent, and not merely by argumentative conclusions. *Thomas* v. *Trustees of Catawba College*, *supra*. The rules of discovery do not authorize an unlimited inquiry into a party's records on the chance that some relevant information may be turned up; *Royster* v. *United Life Ins. Co.*, *supra*; *Haffenberg* v. *Windling*, *supra*; 7 Cyclopedia of Federal Procedure 605-606; nor do they require a corporation to produce all its

business records merely because a suit has been filed against it. *June* v. *George C. Peterson Co.*, 7 Fed. Rules Serv. 34, 41 (N. D. Ill. 1942).

Additional protection to parties against whom discovery is sought is afforded by courts deferring consideration of a motion to produce where a decision on a pending issue may make production unnecessary. Thus, where defendant files a motion to dismiss or a motion for summary judgment contemporaneous with plaintiff's motion to produce, consideration of the latter will be postponed until it is decided whether plaintiff has a cause of action. *Frasier* v. *20th Century Fox Film Corp.*, 119 F. Supp. 495, 497 (D. Neb. 1954); *Daves* v. *Hawaiian Dredging Co.*, 114 F. Supp. 643, 648, 649 (D. Hawaii 1953); *Pyle* v. *Pyle*, 81 F. Supp. 207 (W. D. La. 1948); *Columbia Pictures Corp.* v. *Rogers*, 81 F. Supp. 580, 585 (S. D. W. Va. 1949); *Momand* v. *Paramount Pictures Distributing Co.*, 36 F. Supp. 568, 571 (D. Mass. 1941).

In situations where a party can demonstrate that some valuable right may be infringed upon by discovery proceedings, courts exercise even greater care in issuing orders to produce. Thus, where the production of documents may lead to the revelation of trade secrets, a court will refuse to issue an order to produce unless the party seeking it demonstrates that discovery is necessary for a proper determination of the case. *Drake* v. *Herman*, *supra*; *Griffin Mfg. Co. Inc.* v. *Gold Dust Corp.*, 245 App. Div. 385, 292 NYS 931 (2d Dept. 1935); *Kaplan* v. *Roux Laboratories, Inc.*, 273 App. Div. 865, 76 NYS 2d 601 (2d Dept. 1948); *Lufkin Measuring Tape Co.* v. *Nathéis*, 93 Ohio App. 507, 114 N. E. 2d 149 (Ct. App. Lucas Co. 1953); *International Nickel Co.* v. *Ford Motor Co.*, 15 FRD 357 (S. D. N. Y. 1954); *Wagner Mfg. Co.* v. *Cutler-Hammer*, 10 FRD 480, 485 (S. D. Ohio 1950); *Hercules Powder Co.* v. *Rohm & Haas Co.*, 4 FRD 452 (D. Del. 1944); *Lever Bros. Co.* v. *Procter & Gamble Mfg. Co.*, 38 F. Supp. 680 (D. Md. 1941); *Hamilton Co.* v. *Attapulgus Clay Co.*, 26 F. Supp. 968, 972 (D. Del. 1939).

Here, petitioner alleged in good faith that the consequences of disclosure sought would be adverse to it and its members. The court could not have been unaware of public hostility to petitioner. Fair play required, at least, that the court be certain that the apprehended injury be an essential consequence of affording the state a fair opportunity to prove its case. Whatever rationale there might be for the disclosure ordered, it is clear that if petitioner's motion to dissolve was heard and sustained either by the trial court, the Supreme Court of Alabama or this Court, no trial on the merits could take place. Thus, the information might never be needed by the state.

3. Petitioner recognizes the fact that this Court cannot tell Alabama what procedure it should adopt for the handling of litigation. We raise these questions here, however, because they go to the essential character and nature of the proceedings below. The court below issued an order which, if obeyed, would have subjected petitioner's members to danger. Certainly, the court must be convinced of some needed state interest which had to be served to take such an order out of the category of caprice. In *Watkins* v. *United States*, *supra*, at pp. 187 and 200, this Court stated that the Congress lacked authority to expose the private affairs of individuals for the sake of exposure and without justification in terms of a Congressional function. The harmful effect on individuals was likely to be so great that the Congress was admonished to use its power only within the limits essential to its adequate functioning.

"The mere summoning of a witness and compelling him to testify, against his will, about his beliefs, expressions or associations is a measure of governmental interference. And when these forced revelations concern matters that are unorthodox, unpopular, or even hateful to the general public, the reaction in the life of the witness may be disastrous" (at page 197). And see *Sweezy* v. *New Hampshire*, *supra*.

The *Watkins* and *Sweezy* cases concern the power of the Congress and state legislature, but as we have said *supra*, their rationale is applicable to the judiciary. For whatever limitations are placed upon the legislative investigatory function to protect individuals must be applicable to the courts which are unquestionably bound by rules of substantive and procedural due process. Applying the same considerations here applied in those cases, it is clear, we submit, that the order of the court below was arbitrary, and that the entire proceedings failed to meet the standards of due process essential to a judicial determination under our system.

Conclusion

While many persons may find petitioner's aims objectionable and deplore the erosion of the parochial concept of the ultimate superiority of the white race, the aims and purposes which petitioner is seeking to accomplish constitute the great promise and the basic aspiration of American society. Certainly mere dislike of petitioner's purposes cannot justify use of state machinery to restrict its lawful activities. Moreover, whatever the bases for the proceedings to restrict petitioner's operations, it is entitled to a fair and impartial hearing in accord with the requirements of due process. Although resting its decision on procedural grounds, the State Supreme Court passed upon and sustained the trial court's interlocutory order to require petitioner to disclose the names and addresses of its members. If petitioner's position is vindicated here, therefore, no good purpose can be served by remanding the cause to the State Supreme Court for reconsideration. Cf. *Williams* v. *Georgia*, 349 U. S. 375.

WHEREFORE, it is respectfully submitted that the cause be reversed on the ground that the decree restraining all of petitioner's activities, the order to disclose the names and

addresses of petitioner's members and the lack of fundamental fairness throughout the proceedings violated petitioner's right and the rights of its members to due process of law as secured by the Fourteenth Amendment to the Constitution of the United States.

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October Term, 1957

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Petitioner,

v.

STATE OF ALABAMA, *ex rel.* JOHN PATTERSON, Attorney General,
Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

PETITIONER'S REPLY BRIEF

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Petitioner's, and its Members', Right to Free Association

Respondent concedes that corporations enjoy freedom of speech and press. While it does not clearly deny that in some circumstances there may be a constitutional right, founded in free speech and association, to withhold the kind of information the state has tried to exact here, it argues principally that corporations have no constitutional right to *free association* and, at any rate, may not assert constitutional defenses on behalf of their members—these must be set up by the individual himself.

However, if respondent concedes a corporate right to free speech and press it agrees that rights exist which any reasonable appraisal inextricably connects with free association. This has been made clear in the opinions of this Court. "The right of peaceable assembly is a right cognate to those of free speech and free press and is

equally fundamental." *DeJonge* v. *Oregon*, 299 U. S. 353, 364. The three rights, indeed, are "inseparable." *Thomas* v. *Collins*, 323 U. S. 516, 530. As a distinguished scholar has observed, thus the right of assembly is "an independent right similar in status to that of speech and press." Cushman, *Civil Liberties in the United States* (1956), p. 60.

Like the other basic First Amendment freedoms, freedom of assembly is protected by the Fourteenth Amendment against unreasonable impairment by the states. *DeJonge* case, *supra*; *Whitney* v. *California*, 274 U. S. 357; *Thomas* v. *Collins*, *supra*; *Hague* v. *Committee for Industrial Organization*, 307 U. S. 496.

This constitutional status of freedom of association was most recently reaffirmed by this Court in *Sweezy* v. *New Hampshire*, 354 U. S. 234, 250:

> "... Our form of government is built on the premise that every citizen shall have the right to engage in political expression and association. This right was enshrined in the First Amendment of the Bill of Rights. Exercise of these basic freedoms in America has traditionally been through the media of political associations. Any interference with the freedom of a party is simultaneously an interference with the freedom of its adherents."

It is, of course, not entirely realistic to speak of a corporation's freedom of association. These artificial entities express themselves and associate through officers, agents, and (in the case of membership corporations) members. As a practical matter, to say that only petitioner's members may assert their individual rights to anonymity is to concede a self-nullifying right for then the only ones who could claim the right to non-exposure would be those who already are exposed. But, beyond this obvious realistic consideration, the cases have, when appropriate, permitted one person or entity to assert the rights of another. We have, in our original brief cited and discussed *Pierce* v. *Society of Sisters*, 268 U. S. 510;

Joint Anti-Fascist Refugee Committee v. *McGrath*, 341 U. S. 123; *Barrows* v. *Jackson*, 346 U. S. 249. We may add, as other decisions which expressly or implicitly recognize the propriety of such assertion: *Kedroff* v. *St. Nicholas Cathedral*, 344 U. S. 94; *Adler* v. *Board of Education*, 342 U. S. 485; *American Communications Association* v. *Douds*, 339 U. S. 382; *United Public Workers* v. *Mitchell*, 330 U. S. 75; see also Comment: "State Control of Political Organizations: First Amendment Checks on Powers of Regulation" 66 Yale L. J. 545, 546-550 (1957).

The Constitutional Right of Anonymity

Aside from the harassing aspect of the requirement of exposure, petitioner submits that it impairs a constitutional right of anonymity that may not be infringed in the absence of an overriding communal interest which the state is constitutionally competent to protect. The right of anonymity is an incident of a civilized society and a necessary adjunct to freedom of association and to full and free expression in a democratic state.

In *Watkins* v. *U. S.*, *supra*, this Court said (354 U. S. at 187):

> "There is no general authority to expose the private affairs of individuals without justification in terms of the functions of Congress."

What is true of individuals, petitioner submits, is true of associations; and what is true of Congress is true of all other agencies of government, Federal and state. Government may not, without justification, pierce the veil of anonymity.

The Place of Anonymity in a Democratic Society

It is important to recognize that there is nothing inherently wrong in desiring to keep one's name from the public. Alabama itself by statute, recognizes the value of

anonymity in some circumstances: Title 7, Code of Alabama (1940), Section 370 expressly confers upon a newspaperman the immunity from being compelled to disclose in any legal proceeding or before a legislative committee the source of any information procured or obtained by him and published in his newspaper.

Anonymity has a long and honorable history and may serve important social objectives. The cause of civilized progress was greatly benefited by the fact that Daniel Defoe could publish anonymously his *Shortest Way with the Dissenters,* and it was correspondingly greatly harmed when Defoe's identity was discovered and he was fined and pilloried for his offense (Minto, *Daniel Defoe* (1909), pp. 38-40).

In this country, even before the founding of our republic, the practice of speaking anonymously on social and political matters was accepted as normal and proper. Benjamin Franklin signed his first pieces for the *New England Courant* as "Silence Dogwood" (Bleyer, *Main Currents in the History of American Journalism* (1927), pp. 56-57). The use of names like "Philanthrop," "Humanus" and "Cato" as signatures on articles on public affairs was widespread (*Id.*, pp. 43-100). In 1775, Thomas Paine used the signature "Humanus" in an article for the *Pennsylvania Journal;* after Rev. William Smith, president of the University of Philadelphia, used the name "Cato" in attacking Paine's *Common Sense,* Paine replied under the name of "Forester" (*Id.*, p. 91). The *New Hampshire and Vermont Journal or Farmers Weekly Museum* regularly published articles in the 1790's written by such persons as "The Lay Preacher," "Peter Pencil," "Simon Spunkey," "Peter Pendulum" and "The Pedlar" (*Id.*, p. 128).

The most famous of all American political writings, *The Federalist,* written by Alexander Hamilton, James Madison and John Jay, was published anonymously. In-

deed, the attribution of several of the essays is still in doubt. As Professor Earle points out (*The Federalist*, Modern Library edition (1937), Introduction, p. ix), during the controversy over the endorsement of the Constitution, "The press of the day was submerged with contributions from anonymous citizens." Among those anonymously opposing ratification was New York's Governor George Clinton, who wrote under the name "Cato." (See the introduction by Paul Leicester Ford to the Henry Holt edition of *The Federalist* (1898), pp. xx-xxi.)

Thus, in the early days of our Republic, persons who were or were to become President of the United States, Chief Justice of the United States, Secretary of the Treasury and Governor of New York did not hesitate to maintain their anonymity in publishing weighty public and political documents.

This practice is still used by public officials. *Foreign Affairs*, the United States' most influential periodical dealing with international policy, has frequently in recent years masked the names of its contributors, carrying leading articles signed simply by single initials, including the famous "X" article, "The Sources of Soviet Conduct," which set forth the Government's policy towards the Soviet Union (*Foreign Affairs*, Vol. 25, Nos. 1 & 4, Vol. 27, No. 2, Vol. 36, No. 1).

The millions of Americans who are members of secret fraternal orders certainly believe firmly in their right to operate anonymously (Schlesinger "Paths to the Present" [1949], p. 44). Professor Schlesinger describes them as playing a "positive and continuing role in society" (*Id.*, p. 48).[1]

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[1] A vigorous warning against the growing tendency to limit privacy and force all our activities into the glare of government supervision and public inspection is made by Professor Lasswell "The Threat to Privacy," in MacIver, ed., *Conflict of Loyalties* (1952), pp. 121-140.

Anonymity as an Aid to Free Expression

In a number of ways modern society recognizes anonymity as a valuable aid in assuring free expression of opinion. It is standard practice for newspapers to print letters signed with initials or fictitious names. While the editors require that the writer disclose his name to them, they recognize that a freer expression of opinion can be achieved if they do not require public exposure of the writer's identity.

Public opinion researchers similarly accept the fact that some persons will hesitate to express themselves freely and honestly if they think that there is a chance that their names will ultimately be associated with the answers they give. In *Interviewing for NORC* (1945), the National Opinion Research Center, which has conducted surveys for many government agencies, advised its employees (p. 15):

> "A few persons may be reluctant to talk if they feel their names will be taken. You can explain that NORC *never* wants the name of anyone who doesn't want us to have it."

That the loss of anonymity can have a serious effect on free expression of opinion is recognized in the book, *How to Conduct Consumer and Opinion Research*, Blankenship, ed. (1946). The essay on "Measurement of Employees' Attitude and Morale," advises employers to place (pp. 223-4)

> ". . . emphasis on the point that the questionnaires must not be signed, that no one in the company will have access to the answered questionnaires, that there is no means of identifying a particular person's blank. All of the mechanics of distributing the questionnaire forms and the placing of the answered forms in the ballot box are such as to guarantee anonymity to the employee."

In the same book, the essay on "Trends in Public Opinion Research" describes conclusions drawn by the Office of Public Opinion Research from a comparison of questionnaires answered secretly with others answered by persons who were told that their identity would be known (p. 298):

> "Experiments with secret ballots as compared with oral interviews have shown that respondents are not always frank in stating their opinions. An unpopular opinion or one that reflects in any way upon the prestige of the respondent often gets a higher rating in the secret ballot than in oral replies." [2]

In employees' suggestion programs, likewise, it is common practice to set up a system in which the person making the suggestion does not identify himself but receives a numbered receipt from which he may be identified after the suggestion has been considered. In *How To Conduct A Successful Employees' Suggestion System* (p. 9), Ezra S. Taylor rates anonymity as the most important condition for successful suggestion systems.

Underlying all these practices, anonymous polls, letters to the editor and the like, is the well-founded belief that anonymity in the expression of views contributes to the free play of ideas and hence to the ultimate search for truth, the same search for truth that the founding fathers sought to foster by the guarantees of the First Amendment.

Conversely, it is apparent that a society in which citizens are not allowed to engage in political activity free of the watchful eye of the state would be intolerable. As George Orwell has shown in *Nineteen Eighty-Four*, such prying is consistent only with totalitarianism.

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[2] The original experiments are reported in detail in Cantril, *Gauging Public Opinion* (1944), Chap. V.

Secret Elections in Democracies

Anonymity, secrecy, privacy, however it may be called, thus has a special value in a democratic society. Nowhere is this seen better than in the act that symbolizes the unity of democratic government and its citizens, the election of public officers. It is not too much to say that the degree of freedom that prevails in a country's election is the surest test of the liberty of its citizens. As Mr. Justice Frankfurter pointed out, concurring in *Sweezy* v. *New Hampshire*, 354 U. S. 234, 266 (1957):

> "In the political realm, as in the academic, thought and action are presumptively immune from inquisition by political authority. It cannot require argument that inquiry would be barred to ascertain whether a citizen had voted for one or the other of the two major parties either in a state or national election. Until recently, no difference would have been entertained in regard to inquiries about a voter's affiliations with one of the various so-called third parties that have had their day, or longer, in our political history. This is so, even though adequate protection of secrecy by way of the Australian ballot did not come into use till 1888."

This right of "political privacy" (354 U. S. at 267) deserves protection whether exercised through major parties, through minor parties as in *Sweezy*, or through organizations with political objectives such as petitioner.

The Absence of Justification for Compulsory Disclosure

Petitioner concedes, of course, that where a paramount societal interest is to be served or where injury to the community is to be avoided, the right of anonymity must yield and disclosure of identity may constitutionally be compelled. But, as this Court held in *Watkins* v. *U. S. supra*, some justification must be shown. There is, the Court said, no "general power to expose where the predominant result

can only be an invasion of the private rights of individuals" (354 U. S. at 200). In the words of Mr. Justice Frankfurter, concurring in *Sweezy* v. *New Hampshire*, *supra*, 354 U. S. at 266-7, the Court must strike a balance between "the right of a citizen to political privacy, as protected by the Fourteenth Amendment, and the right of the State to self-protection."

Respondents rely heavily on *New York ex rel. Bryant* v. *Zimmerman*, 278 U. S. 63, for the proposition that the State of Alabama may properly demand that petitioner disclose the names and addresses of its members. The holding in the *Zimmerman* case, however, is much narrower, and does not encompass the questions of constitutional law presented in the instant case.

In the first place, the *Zimmerman* case dealt with a New York statute as applied to the Buffalo branch of the Ku Klux Klan. This Court recognized the Ku Klux Klan as a "secret, oath-bound association" (at 71-72) and explicitly noted that the class of organizations in the New York statute has "a manifest tendency . . . to make the secrecy surrounding its purposes and membership a cloak for acts and conduct inimical to personal rights and public welfare." (at 75). The opinion also relates "common knowledge" and a Congressional report concerning the Ku Klux Klan's unconstitutional purposes and illegal activities.

Petitioner is clearly not the kind of organization with which this Court concerned itself in the *Zimmerman* case. The constitutional nature of petitioner's aims and activities, set forth and documented at pp. 2-8 of Petitioner's Brief, is well-known throughout the United States and seems a proper subject for judicial notice.

The New York statute was upheld on the following ground:

> "... requiring this information to be supplied for the public files will operate as an effective or substantial deterrent from the violations of public and private right to which the association might be tempted if such a disclosure were not required." (at p. 72)

Compliance with the Alabama order to produce, however, will operate rather as an effective and substantial deterrent on the exercise of constitutional rights of free speech and association by petitioner and its members.

Moreover, the *Zimmerman* case involved no such "special circumstances" or "climate of opinion" as exist in Alabama at the present time. (See Petition, pp. 19-25 and Petitioner's Brief, pp. 12-18). Thus, the action of the state of New York in requiring the Buffalo Ku Klux Klan to reveal its members is completely distinguishable from the court order at issue here. The infringements upon constitutional rights of free speech and association raised in the case at bar are directly connected to the reprisals against members indicated by the atmosphere in Alabama—economic pressure, including loss of employment, harassment, intimidation, and threats of violence as well as actual force.

As the state of Alabama has not demonstrated any valid reason for requiring production of petitioner's membership list, petitioner has a right to "protection against arbitrary, unreasonable, and unlawful interference with ... [its] patrons ..." *Pierce* v. *Society of Sisters*, 268 U. S. 510, 535-536.

Finally, the *Zimmermann* case has no application in the instant case because the NAACP, unlike the Ku Klux Klan, is a political organization which plays an integral role in the free trade of ideas which is essential to our democratic form of government. As a consequence, the NAACP necessarily has a "right of anonymity" on behalf of its members as discussed in the preceding sections of this brief.

> "The protection given speech and press was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people . . . All ideas having even the slightest social importance—unorthodox ideas, controversial ideas, even ideas hateful to the prevailing climate of opinion—have the full protection of the guarantees, unless they encroach upon the limited area of more important interests."

Roth v. *United States*, 352 U. S. 964, 1 L. ed. 2d (Adv. pp. 1498, 1506-1507); see also *Thornhill* v. *Alabama*, 310 U. S. 88, 101-102 and *Grosjean* v. *American Press Co.*, 297 U. S. 233, 249-250.

No constitutional justification exists in this case. The order requiring that petitioner expose its membership lists, therefore, should be reversed.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

NO. 91

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, A Corporation,
Petitioner,

VS.

STATE OF ALABAMA, ex rel. JOHN PATTERSON, ATTORNEY GENERAL

BRIEF AND ARGUMENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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IN THE

Supreme Court of the United States

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BRIEF AND ARGUMENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

BRIEF AND ARGUMENT FOR RESPONDENT

OPINION OF THE COURT BELOW

The opinion of the Supreme Court of Alabama is reported in 91 So. 2d, at page 214.

JURISDICTION

The petitioner has applied for a writ of certiorari from the Supreme Court of the United States to review the judgment of the Supreme Court of Alabama, rendered December 6, 1957, under the provisions of Title 28, Section 1257(3), United States Code, Judiciary and Judicial Procedure. (See petitioner's brief, page 2.)

QUESTIONS PRESENTED

I.

Is any constitutional question presented by the decision of the Supreme Court of Alabama, in view of the issues presented to that Court by the petition-

er, its failure to follow prescribed Alabama procedures, and the long standing decisions of the Supreme Court of the United States upon the applicability of the First, Fourth, Fifth and Fourteenth Amendments, to corporations?

II.

Has the petitioner, a membership corporation, having neglected to avail itself of the proper remedy to review the trial court's order to produce, having chosen to stand in contempt of that trial court in asserting the alleged constitutional rights of its members, and having obtained review of the trial court's contempt order, but not reversal thereof, been denied due process of law because its own contumacy has precluded its further proceeding on the merits of the main case, pending its purging itself of contempt?

III.

Has the petitioner, a membership corporation, the constitutional right to refuse to produce records of its membership in Alabama, relevant to issues in a judicial proceeding to which it is a party, on the mere speculation that these members may be exposed to economic and social sanctions by private citizens of Alabama because of their membership?

STATEMENT OF THE CASE

Upon June 1, 1956, the State of Alabama, on the relationship of John Patterson, its Attorney General, filed a bill in equity, against the petitioner, National Association for the Advancement of Colored People, a Corporation, in the Fifteenth Judicial Circuit, Mont-

gomery County, Alabama. The gravamen of the bill was that the corporation conducted extensive activities in pursuance of its corporate purpose in Alabama without having filed with the Secretary of State a certified copy of its articles of incorporation and an instrument in writing, under the seal of the corporation, designating a place of business and an authorized agent residing in Alabama, as required by Title 10, Sections 192, 193 and 194, Code of Alabama 1940, thus doing business in Alabama in violation of Section 232 of the Constitution of Alabama 1901, and Title 10, Section 194, Code of Alabama 1940.

The bill of complaint alleged irreparable harm to the property and civil rights of the residents and citizens of Alabama, for which criminal prosecutions and civil actions at law afforded no adequate relief. A temporary injunction and restraining order was requested, preventing the respondent below and its agents from further conducting its business within Alabama, from maintaining any offices and organizing further chapters within the State. A permanent injunction, in accordance with the prayer for temporary injunction, was also prayed for. Finally, an order of ouster expelling the corporation from organizing or controlling any chapters of the National Association for the Advancement of Colored People in Alabama, and exercising any of its corporate functions within the State, was requested.

On June 1, 1956, the Circuit Court of Montgomery County, Alabama, entered a decree for a temporary restraining order and injunction, as prayed for and further enjoined until further order of the court petitioner from filing any application, paper or document for the purpose of qualifying to do business in

Alabama. Service was had upon respondent corporation, at its offices in Birmingham, Alabama.

On July 2, 1956, petitioner filed a motion to dissolve the temporary restraining order and demurrers to the bill of complaint which were set for hearing on July 17. On July 5th the State filed a motion to require petitioner to produce certain records, letters and papers alleging that the examination of the papers was essential to its preparation for trial.

The State's motion was set for hearing on July 9, 1956. At the hearing, at which petitioner raised generally but not explicitly both State and Federal constitutional objections, the court issued an order requiring production of the following items requested in the State's motion:

> "1. Copies of all charters of branches or chapters of the National Association for the Advancement of Colored People in the State of Alabama.
>
> 2. All lists, documents, books and papers showing the names, addresses and dues paid of all present members in the State of Alabama of the National Association for the Advancement of Colored People, Inc.
>
> 4. All lists, documents, books and papers showing the names, addresses and official position in respondent corporation of all persons in the State of Alabama authorized to solicit memberships in and contributions to the National Association for the Advancement of Colored People, Inc.

5. All files, letters, copies of letters, telegrams and other correspondence, dated or occurring within the last twelve months next preceding the date of filing the petition for injunction, pertaining to or between the National Association for the Advancement of Colored People, Inc., and persons, corporations, associations, groups, chapters and partnerships within the State of Alabama.

6. All deeds, bills of sale and any written evidence of ownership of real or personal property by the National Association for the Advancement of Colored People, Inc., in the State of Alabama.

7. All cancelled checks, bank statements, books, payrolls, and copies of leases and agreements, dated or occurring within the last twelve months next preceding the date of filing the petition for injunction, pertaining to transactions between the National Association for the Advancement of Colored People, Inc., and persons, chapters, groups, associations, corporations and partnerships in the State of Alabama.

8. All papers, books, letters, copies of letters, documents, agreements, correspondence and other memoranda pertaining to or between the National Association for the Advancement of Colored People, Inc., and Autherine Lucy, Autherine Lucy Foster, and Polly Myers Hudson.

11. All lists, books and papers showing

the names and addresses of all officers, agents, servants and employees in the State of Alabama of the National Association for the Advancement of Colored People, Inc.

14. All papers, books, letters, copies of letters, files, documents, agreements, correspondence and other memoranda pertaining to or between the National Association for the Advancement of Colored People, Inc., and Aurelia S. Browder, Susie McDonald, Claudette Colvin, Q. P. Colvin, Mary Louise Smith and Frank Smith, or their attorneys, Fred D. Gray and Charles D. Langford."

The court then extended the time to produce until July 24th, and simultaneously postponed the hearing on petitioner's demurrers and motion to dissolve the temporary injunction to July 25.

On July 23, petitioner filed an answer on the merits. In addition, petitioner averred that it had procured the necessary forms for the registration of a foreign corporation supplied by the office of the Secretary of State of the State of Alabama, and filled them in as required. Petitioner attached them to its answer and offered to file same if the court would dissolve the order barring petitioner from registering. At the same time petitioner filed a motion to set aside the order to produce which motion was set down for hearing on July 25th.

On July 25, 1956, the court heard oral testimony, and argument of counsel and overruled the motion to set aside and ordered the production of the items stated in its previous order. Petitioner refused to comply with the court's order, upon which the court ad-

judged petitioner in contempt, assessed a fine of $10,000.00 against it as punishment for the contempt with the further provision that unless the petitioner complied with the order to produce within five days the fine would be increased to $100,000.00. The petitioner's motion to dissolve the temporary injunction was not heard in view of its contempt in refusing to obey the order to produce.

Upon July 30, 1956, petitioner filed, with the trial court, a motion to set aside or stay execution of the contempt decree pending review by the Supreme Court of Alabama. Petitioner also tendered miscellaneous documents which it alleged to be substantial compliance. At all times the corporation refused to produce the names and addresses of its members. This motion was denied and petitioner then filed a motion in the Supreme Court of Alabama, requesting stay of execution of the judgment below pending review by the appellate court. This motion or application was also denied.[1] On the same day the Circuit Court entered an order adjudging petitioner in further contempt, increasing the fine to $100,000.00, in view of its continued refusal to obey the order to produce.

On August 8, petitioner filed a purported petition for writ of certiorari in the Supreme Court of Alabama. After oral argument on August 13, 1956, the Supreme Court of Alabama, denied the writ on the grounds of its insufficiency.[2]

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1. 91 So. 2d 220.

2. 91 So. 2d 221.

Thereafter on August 20, 1956, petitioner filed a second petition for writ of certiorari.[3] Upon December 6, 1956, the Supreme Court of Alabama, denied the writ requested in this petition.

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3 The grounds alleged by the petitioner in both the first and second petitions for certiorari are as follows:

"Petitioner respectfully shows unto this Honorable Court as follows:

1. That the Circuit Court erred in entering its order of July 11, 1956, requiring petitioner to produce certain documents and papers set out therein.

2. That the Circuit Court erred in overruling petitioner's motion to set aside its order to produce.

3. That the Circuit Court erred in adjudging petitioner in contempt and assessing a $10,000 fine against it as punishment therefor.

4. That the Circuit Court erred in punishing petitioner $10,000 for contempt in excess of its statutory authority under Title 13, Section 143 of the Alabama Code of 1940.

5. That the Circuit Court erred in overruling petitioner's motion to set aside and or modify its order and judgment adjudging petitioner in contempt and or stay execution of its judgment pending review by this Court.

6. That the Circuit Court erred in adjudging petitioner in contempt and in assessing a $10,000 fine against it as punishment therefor.

7. That the Circuit Court erred in punishing and fining petitioner $100,000 for contempt in excess of its statutory authority under Title 13, Section 143 of the Alabama Code of 1940.

8. That the Circuit Court erred in granting the temporary restraining order.

9. That the Circuit Court erred in failing to dissolve its injunction and in refusing to permit petitioner to register with the Secretary of State after it had tendered compliance with its answer.

10. That all of the errors committed by the Circuit Court and set forth above are in violation of petitioner's right and the rights of its members to due process of law and equal protection of the laws secured under the Fourteenth Amendment to the Constitution of the United States, and violate petitioner's rights under the commerce clause of the Federal Constitution."

ARGUMENT

I.

THE JUDGMENT BELOW BASED UPON STATE PROCEDURE DISPOSED OF ALL QUESTIONS PROPERLY RAISED BY PETITIONER, AND LEFT NO FEDERAL QUESTION TO BE REVIEWED BY THIS COURT.

In asserting its claim that the judgment below employed the device of State procedure to preclude review by the United States Supreme Court, the petitioner attempts to show that the Supreme Court of Alabama departed from a long standing State procedure of permitting review of contempt proceedings by certiorari. That opinion reveals the error of this contention. It is clear that the Alabama Court reaffirmed its rule that certiorari was the proper method by which to review contempt, by citing, **Ex parte Dickens**, 162 Ala. 272, 50 So. 218. The gist of the opinion is that if the petitioner felt aggrieved by the trial court's order to produce its proper remedy was a petition for writ of mandamus in the Supreme Court to compel the trial judge to set aside his order. By this means the aggrieved party can obtain review without the danger of a contempt citation. But petitioner chose another course, though it had ample time in which to have filed mandamus proceedings prior to July 25, 1956. Petitioner chose to test the order to produce by a refusal to obey based upon vaguely designated constitutional rights. The Supreme Court of Alabama then reviewed the contempt proceedings with a view to determining if the trial court had jurisdiction of the person, subject matter and whether it

had exceeded its authority. Its greatest preoccupation was naturally with the nature of the contempt, civil or criminal? It needs no extensive argument or citation of authorities to show that its conclusion on this point was sound. See **Ex parte King,** 263 Ala. 487, 83 So. 2d 241; and **United States v. United Mine Workers of America,** 330 U. S. 258.

But the petitioner asserts that because, in **Ex parte Morris,** 252 Ala. 551, 42 So. 2d 17, Morris, who had refused to produce names of Klu Klux Klan members before a grand jury, obtained a review of a contempt citation by petition for certiorari, the National Association for the Advancement of Colored People, has in some mysterious fashion been aggrieved in the case at bar. However, it can readily be seen that Morris' contempt was occasioned by his refusal to answer a question before a grand jury upon direct orders of a judge. He had no opportunity to test the propriety of the questioning by petition for mandamus but because of the immediate action of the judge in sentencing him to jail he was left to the remedy of certiorari. It is otherwise, with petitioner herein who had sixteen days in which to file his petition for mandamus to review the order to produce.

In any event, in both, **Ex parte Morris,** 252 Ala. 551, 42 So. 2d 17, and the case at bar, the Alabama Supreme Court considered the rights of the petitioners to refuse to produce their records on the grounds of privilege against self-incrimination and security against unreasonable searches and seizures. While citing Federal cases to demonstrate that these rights had not been violated, the Alabama court correctly treated them as matters of State law, in view of the holding

of the United States Supreme Court, that the due process clause of the Fourteenth Amendment does not incorporate the first eight amendments to the United States Constitution. **Adamson v. California,** 332 U. S. 46; and **Wolf v. Colorado,** 338 U. S. 25. Especially, the Fourth Amendment has been held not to be a monitor upon State rules concerning searches and seizures unless the State action complained of was so shocking as to amount to fundamental unfairness. **National Safe Deposit Company v. Stead,** 232 U. S. 58. It is true that such cases as **Wolf v. Colorado,** 338 U. S. 25, contain language supporting the proposition that the Fourteenth Amendment implements the Fourth Amendment as against State action. A reading of the majority opinion at page 27, dispels this notion:

> "The security of one's privacy against arbitrary intrusion by the police—which is at the core of the Fourth Amendment—is basic to a free society. It is therefore implicit in the 'the concept of ordered liberty' and as such enforceable against the States through the Due Process Clause. The knock at the door, whether by day or by night, as a prelude to a search, without authority of law but solely on the authority of the police, did not need the commentary of recent history to be condemned as inconsistent with the conception of human rights enshrined in the history and the basic constitutional documents of English-speaking peoples.
>
> Accordingly, we have no hesitation in saying that were a State affirmatively to sanction such police incursion into privacy it

would run counter to the guaranty of the Fourteenth Amendment. . . ."

From the above it is evident that the court did not decide that the Fourth Amendment in its detailed entirety was an inhibition upon State action but rather that arbitrary oppressive police action is a violation of due process.

Insofar as petitioner's asserted rights under the Commerce Clause of Article I, Section 8 of the United States Constitution are concerned, it is submitted that the extent and nature of its activities in Alabama are the determinant facts for deciding what limitations the State might place upon those activities. That the State has power over foreign corporations, even the power of ouster, is established law. See **State Ex rel. Griffith v. Knights of the Klu Klux Klan,** 117 Kan. 564, 232 P. 254, cert. denied 273 U. S. 664; and **Asbury Hospital v. Cass County,** 326 U. S. 207. The petitioner takes the anomalous position that its activities are protected by the Commerce Clause and then refuses the sovereign the right to examine its records to ascertain the applicability of that Clause to those activities and the corresponding limitation, if any, upon the State's power of control. A similar argument was made in **Oklahoma Press Publishing Co. v. Walling,** 327 U. S. 186. This court refused it and held that the Wages and Hours Administrator had the authority to examine the newspaper's records to determine whether or not the Wages and Hours Laws applied to the company and whether it was violating them.

We finally come to the privilege and immunities clause of the First Amendment, as protected by the Fourteenth Amendment, a right so vigorously as-

serted by the petitioner in its application to this Court. At no point does it appear that these rights, if petitioner own any such, were urged by it before any Court of Alabama. A multitude of cases lay down the rule that the United States Supreme Court will not assume jurisdiction when a Federal question has not been properly presented in the Federal court. One such case is **Herndon v. Georgia,** 295 U. S. 441, in which Mr. Justice Sutherland said at page 442:

> "It is true that there was a preliminary attack upon the indictment in the trial court on the ground, among others, that the statute was in violation 'of the Constitution of the United States,' and that this contention was overruled. But, in addition to the insufficiency of the specification, the adverse action of the trial court was not preserved by exceptions pendente lite or assigned as error in due time in the bill of exceptions, as the settled rules of the state practice require. In that situation, the state supreme court declined to review any of the rulings of the trial court in respect of that and other preliminary issues; and this determination of the state court is conclusive here. . . ."

More recently, the case of **Williams v. Georgia,** 349 U. S. 375, turned upon the fact that this Court considered that the petitioner therein had raised a Federal question in the manner prescribed and permitted by Georgia procedure but that the Georgia court refused to consider the question raised. The dissenting opinion took a contrary view of the Georgia procedure but all Justices agreed that for the United

States Supreme Court to consider a Federal Constitutional question it must have first been properly raised in the state court in accordance with state procedure.

II.

The petitioner herein argues that it was denied due process of law by the totality of the State action in the case to date. It is not entirely clear whether the basis of this contention is the denial to the corporation of a fair hearing or alternatively that because the present state of the case leaves it out of business in Alabama, and precluded from further contest in the Alabama courts pending its purging itself of contempt, it has been denied certain rights guaranteed by the privileges and immunities clause of Section 1 of the Fourteenth Amendment. In addition, the corporation seems to be asserting certain First Amendment rights of its members and members of the Negro race in general. It is somewhat difficult to detect the individual ingredients in its melange of asserted rights and grievances.

The course of petitioner's argument, if we may change our metaphor, seems to be that, because the State incidentally to an equity action against it, demanded the names of its members possibly causing harrassment and discouragement of these members by private individuals, possibly causing them to discontinue membership in the corporation, possibly leading to its ultimate weakening and demise, the rights of both the members and the corporation to freedom of speech, assembly, and redress of grievances have been abridged by the State. Petitioner alleges that it is the main effective voice of Negro citizens attempting to assert their constitutional rights. Thus, it argues its

rights depend upon its members and its members' rights upon it. They are together a sort of legal flagellatae spawning interdependant constitutional rights. Tangential to the circle of this main argument is the assertion of privilege against self-incrimination and freedom from unreasonable searches and seizures.

In building up the picture of the State, acting through its Attorney General and its courts to deprive petitioner of its rights, request is made that the Court take judicial notice of what is called "public information." Petitioner's brief, pages 19 through 25. While we do not agree that the elasticity of judicial notice stretches to include all the various hearsay, opinions and speculation included on these pages, if it is petitioner's contention that the great majority of people in Alabama favor segregation, to that one fact we accede.

However, in addition, the impression is given by the footnotes on pages 23 through 25, of petitioner's brief, that somehow orthodox Alabama procedure was departed from so as to place the corporation in the position of having to disclose its membership ere it could proceed to a hearing on its motion to dissolve the temporary injunction and ultimately on the merits of the case. This impression is false. The motion to produce was granted on notice and hearing. Ample time was given to contest it by mandamus or to comply. The material requested was relevant to proof of the nature and method of petitioner's business in Alabama. Such proof was relevant to determine whether the temporary injunction should remain in effect and whether or not a permanent injunction, and finally an order of ouster should be granted. While it is true that generally speaking oral testimony is not taken on

a motion to dissolve a temporary injunction, ex parte affidavits of parties are permitted. **Profile Cotton Mills v. Calhoun Water Co.**, 189 Ala. 181, 66 So. 50, and Title 7, Section 1061, Code of Alabama 1940. The names and addresses of petitioner's members were needed for the State's preparation of affidavits in opposition to the motion to dissolve. Furthermore, the course which the trial would take was uncertain. Whether or not the temporary injunction was dissolved, a trial on the merits could have followed immediately. In that event the State needed to examine the corporation's records to prepare its proof of the allegations of the bill of complaint. While petitioner admitted in its answer some of the State's allegations it denied solicitation of members for either the local chapters or the parent corporation, or that it had organized local chapters within the State. See petitioner's brief, page 8. It would be a strange rule that a party may not examine documents to aid in the preparation of a case until such time as trial on the merits has commenced in court.

While the defenses to production of the requested records of privilege against self-incrimination and freedom from unreasonable searches and seizures are peripheral to the petitioner's arguments, a word concerning them is in order. That neither of these rights is infringed upon by such an order to produce was established as early as **Hale v. Henkel**, 201 U. S. 43, and carried down to **United States v. White**, 322 U. S. 694; and **Rogers v. United States**, 340 U. S. 367.

This brings us to the central question raised by the petitioner. Does a corporation have the right to refuse to disclose the names of its members on the speculation that they may be exposed to public scorn and

dislike and to possible unfair economic and social pressures by private citizens? The answer is no.

First of all, neither the privileges and immunities of the First Amendment nor the rights created by the Fourteenth Amendment are protected against individual as contrasted with state action. **United States v. Cruikshank,** 92 U. S. 542; and **Powe v. United States,** 109 Fed. 2d 147, (C. A. 5), cert. denied **United States v. Powe,** 309 U. S. 679.

Secondly, and most important, a corporation may not assert the privileges and immunities of its individual members. Whether this be considered merely as a statement of the rule that a party may not assert rights personal to another party or more important a statement that the rights to freedom of speech; assembly and redress of grievances are reserved to natural persons, it is still the law.

This Court has held:

> "Natural persons, and they alone, are entitled to the privileges and immunities which Section 1 of the Fourteenth Amendment secures for 'citizens of the United States.' Only the individual respondents may, therefore, maintain this suit." **Hague v. Committee for Industrial Organization,** 307 U. S. 496, at page 514.

See also **International Ladies Garment Workers Union, A. F. L. v. Seamprufe, Inc.,** 121 Fed. Supp. 165 (D. C. E. D. Okla.); and **Local 309 United Furniture Workers of America, C. I. O. v. Gates,** 75 Fed. Supp. 620 (D. C. N. D. Ind.).

These cases would seem to dispose of all questions, even those raised by the line of cases cited on page 18 of petitioner's brief. Of these only, **United States v. Rumely,** 345 U. S. 41 and **Pierce v. Society of Sisters,** 268 U. S. 510, would seem to support the petitioner's right to assert rights on behalf of its members or to claim that injury to its members was injury to it. The other cases are distinguished by the fact that the person or company asserted its own right. For example, **Burstyn, Inc. v. Wilson,** 343 U. S. 495; **Pennekamp & the Miami Herald Publishing Co. v. Florida,** 328 U. S. 331, deal with direct censorship of the press. **Thomas v. Collins,** 323 U. S. 516, involves an attempt at prior censorship of a speech by a labor organization. The right asserted was individual and personal. **Pierce v. Society Sisters,** 268 U. S. 510, can be explained on the theory that the denial of the right of individuals to send their children to private schools eliminated by state action the means of livelihood and property rights of the private schools of Oregon. It is distinguishable from the case at bar, on the grounds that the statute operated on the individuals to prevent their doing business with private schools, and thereby directly destroyed a property interest of those schools. **United States v. Rumely,** 345 U. S. 41, is also distinguishable. It deals principally with freedom of the press. It is true that the court vindicated Rumely's refusal to disclose the names of the persons to whom he sold his publications. There was no majority opinion holding that his refusal could be based upon constitutional grounds. Mr. Justice Black did say that the freedom of the press was involved but it is clear that what concerned him was harassment of the press by public officials rather than the sensitivity of Rumely's readers who might be exposed to public gaze.

The words of Mr. Justice Jackson in the **Joint Antifascist Refugee Committee v. McGrath**, 341 U. S. 123, at pages 183 and 184, are particularly apposite to the case at bar:

> "I agree that mere designation as subversive deprives the organizations themselves of no legal right or immunity. By it they are not dissolved, subjected to any legal prosecution, punished, penalized, or prohibited from carrying on any of their activities. Their claim of injury is that they cannot attract audiences, enlist members, or obtain contributions as readily as before. These, however, are sanctions applied by public disapproval, not by law. It is quite true that the popular censure is focused upon them by the Attorney General's characterization. But the right of privacy does not extend to organized groups or associations which solicit funds or memberships or to corporations dependant upon the state for their charters. The right of individuals to assemble is one thing; the claim that an organization of secret undisclosed character may conduct public drives for funds or memberships is another. They may be free to solicit, propagandize, and hold meetings, but they are not free from public criticism or exposure. If the only effect of the Loyalty Order was that suffered by the organizations, I should think their right to relief very dubious."

The petitioner has attempted to make of this a segregation case. It is not. It involves merely the power

of a state to compel foreign corporations operating within its borders, whatever their purpose, whether they be profit or non-profit, to conform to the laws applicable to all foreign corporations enacted for the protection of the citizens of Alabama. The merits of the State's proceeding in equity to enjoin and oust the corporation from Alabama are not before this Court. Perhaps they never will or should be. That the petitioner is entitled ultimately to a hearing on the merits of the case is basic to our law. But it is the petitioner's own recalcitrance which has prevented its proceeding to the merits. The rule of law forbidding a party in equity who is in contempt of court continuing further with a case is neither novel nor unfair. It makes the best of sense that a party who refuses to divulge information necessary to the conduct of a case should be prevented continuing with it. The petitioner, on mere speculation of injury by private individuals to what it construes to be the rights of its members, refuses to deliver to the court a list of that membership. It also arrogates the constitutional rights of its members to itself, asserting a dubious infringement based not on State but on individual action. If such resistance to the orderly process of a trial is permitted, corporations and particularly membership corporations will be permitted to place themselves above and outside the law. If we may be permitted a supposition, no more far fetched than some of those in petitioner's brief, we pose the situation of a prominent labor leader, under investigation, who refuses to produce records of his Union, even its membership, on the grounds that those members might be incriminated or perhaps because of the odious reputation of the particular Union held up to public scorn with a resulting fall in Union membership and Union power.

Can it be said that a Union official could refuse these records on such a basis. The answer is no. How then does the petitioner's case differ? It does not. For these reasons there is no merit in its refusal to obey the order to produce issued by a court of Alabama, having jurisdication of both person and subject matter.

CONCLUSION

For the foregoing reasons this petition for certiorari should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Edmon L. Rinehart, one of the attorneys for the respondent, The State of Alabama, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 10th day of May 1957, I served copies of the foregoing brief in opposition on Arthur D. Shores, 1630 Fourth Avenue, North, Birmingham, Alabama, by placing a copy in a duly addressed envelope, with first class postage prepaid, in the United States Post Office at Montgomery, Alabama, and on Thurgood Marshall, 107 West 43rd Street, New York, New York, by placing two copies in a duly addressed envelope, with Air Mail postage prepaid, in the United States Post Office at Montgomery, Alabama.

I further certify that this brief in opposition is presented in good faith and not for delay.

Edmon L. Rinehart

EDMON L. RINEHART
Assistant Attorney General of
Alabama

Judicial Building
Montgomery, Alabama

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

NO. 91

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, A Corporation,

Petitioner

V.

STATE OF ALABAMA, ex rel. JOHN PATTERSON ATTORNEY GENERAL

BRIEF AND ARGUMENT FOR RESPONDENT

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OTHER AUTHORITIES

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

NO. 91

BRIEF AND ARGUMENT FOR RESPONDENT

OPINION OF THE COURT BELOW

The opinion of the Supreme Court of Alabama is reported in 91 So. 2d, at page 214.

JURISDICTION

The petitioner's application for a writ of certiorari from the Supreme Court of the United States to review the judgment of the Supreme Court of Alabama, rendered December 6, 1956, under the provisions of Title 28, Section 1257(3), United States Code, Judiciary and Judicial Procedure, has been granted. The judgment of the Supreme Court of Alabama was not dependent upon a decision of any federal question.

QUESTIONS PRESENTED

I.

Has the petitioner, a foreign membership corporation, having neglected to avail itself of the proper remedy in the Alabama courts, and having chosen to remain in contempt, standing to obtain review in this

Court of the orders and decisions of the Alabama courts?

II.

Did the totality of the State's action in seeking an injunction and ouster of petitioner, a foreign corporation, and the procedure used to obtain evidence upon the issues of that action, exceed the powers reserved to the State by the Tenth Amendment?

III.

Did the State of Alabama violate the rights of the petitioner, a foreign corporation, and of its members guaranteed by the implementation of the First Amendment by the Fourteenth Amendment, in demanding the records and membership lists of petitioner?

STATEMENT OF THE CASE

Upon June 1, 1956, the State of Alabama, on the relation of John Patterson, its Attorney General, filed a bill in equity, against the petitioner, National Association for the Advancement of Colored People, a Corporation, in the Fifteenth Judicial Circuit, Montgomery County, Alabama. The gravamen of the bill was that the corporation conducted extensive intrastate activities in pursuance of its corporate purpose in Alabama without having filed with the Secretary of State a certified copy of its articles of incorporation and an instrument in writing, under the seal of the corporation, designating a place of business and an authorized agent residing in Alabama, as required by Title 10, Sections 192, 193 and 194, Code of Alabama 1940, thus doing business in Alabama in violation of

Section 232 of the Constitution of Alabama 1901, and Title 10, Section 194, Code of Alabama 1940. (R pp. 1, 2, and 3).

The bill of complaint alleged irreparable harm to the property and civil rights of the residents and citizens of Alabama, for which criminal prosecutions and civil actions at law afforded no adequate relief. A temporary injunction and restraining order was requested, preventing the respondent below and its agents from further conducting its intrastate business within Alabama, from maintaining any offices and organizing further chapters within the State. A permanent injunction, in accordance with the prayer for temporary injunction, was also prayed for. Finally, an order of ouster forbidding the corporation from organizing or controlling any chapters of the National Association for the Advancement of Colored People in Alabama, and exercising any of its corporate functions within the State, was requested. (R. p. 2).

On June 1, 1956, the Circuit Court of Montgomery County, Alabama, entered a decree for a temporary restraining order and injunction, as prayed for and further enjoined until further order of the court petitioner from filing any application, paper or document for the purpose of qualifying to do business in Alabama. Service was had upon the corporation, at its offices in Birmingham, Alabama. (R. pp. 18, 19, 20)

On July 2, 1956, petitioner filed a motion to dissolve the temporary restraining order and demurrers to the bill of complaint which were set for hearing on July 17. On July 5th the State filed a motion to require petitioner to produce certain records, letters and

papers alleging that the examination of the papers was essential to its preparation for trial. (R. p. 3)

The State's motion was set for hearing on July 9, 1956. At the hearing, at which petitioner raised generally but not explicitly both State and Federal constitutional objections, (R. p. 6) the court issued an order requiring production of the following items requested in the State's motion:

> "1. Copies of all charters of branches or chapters of the National Association for the Advancement of Colored People in the State of Alabama.
>
> "2. All lists, documents, books and papers showing the names, addresses and dues paid of all present members in the State of Alabama of the National Association for the Advancement of Colored People, Inc.
>
> "4. All lists, documents, books and papers showing the names, addresses and official position in respondent corporation of all persons in the State of Alabama authorized to solicit memberships in and contributions to the National Association for the Advancement of Colored People, Inc.
>
> "5. All files, letters, copies of letters, telegrams and other correspondence, dated or occurring within the last twelve months next preceding the date of filing the petition for injunction, pertaining to or between the National Association for the Advancement of Colored People, Inc., and persons, corpor-

ations, associations, groups, chapters and partnerships within the State of Alabama.

"6. All deeds, bills of sale and any written evidence of ownership of real or personal property by the National Association for the Advancement of Colored People, Inc., in the State of Alabama.

"7. All cancelled checks, bank statements, books, payrolls, and copies of leases and agreements, dated or occurring within the last twelve months next preceding the date of filing the petition for injunction, pertaining to transactions between the National Association for the Advancement of Colored People, Inc., and persons, chapters, groups, associations, corporations and partnerships in the State of Alabama.

"8. All papers, books, letters, copies of letters, documents, agreements, correspondence and other memoranda pertaining to or between the National Association for the Advancement of Colored People, Inc., and Autherine Lucy, Autherine Lucy Foster, and Polly Myers Hudson.

"11. All lists, books and papers showing the names and addresses of all officers, agents, servants and employees in the State of Alabama of the National Association for the Advancement of Colored People, Inc.

"14. All papers, books, letters, copies of letters, files, documents, agreements, corres-

pondence and other memoranda pertaining to or between the National Association for the Advancement of Colored People, Inc., and Aurelia S. Browder, Susie McDonald, Claudette Colvin, Q..P. Colvin, Mary Louise Smith and Frank Smith, or their attorneys, Fred D. Gray and Charles D. Langford." (R. pp. 20, 21 and 22)

The court then extended the time to produce until July 24th, and simultaneously postponed the hearing on petitioner's demurrers and motion to dissolve the temporary injunction to July 25. (R. p. 6)

On July 23, petitioner filed an answer on the merits, denying certain intrastate activities constituting doing business in Alabama. In addition, though denying the applicability of the Alabama statutes, petitioner averred that it had procured the necessary forms for the registration of a foreign corporation supplied by the office of the Secretary of State of the State of Alabama, and filled them in as required. Petitioner attached them to its answer and offered to file same if the court would dissolve the order barring petitioner from registering. At the same time petitioner filed a motion to set aside the order to produce which motion was set down for hearing on July 25th. (R. pp. 6 and 7)

On July 25, 1956, the court heard oral testimony, and argument of counsel, the Attorney General testifying that if the petitioner would agree that it was doing business in the State of Alabama, and agree as to the nature of that business, the material sought by motion would not be needed. (R. p. 7) The Court overruled the motion to set aside and ordered the pro-

duction of the items stated in its previous order. Petitioner refused to comply with the court's order, upon which the court adjudged petitioner in contempt, assessed a fine of $10,000.00 against it for the contempt with the further provision that unless the petitioner complied with the order to produce within five days the fine would be increased to $100,000.00 The Court also decreed that if the petitioner complied with the order, it would entertain a motion to remit the fine. The petitioner's motion to dissolve the temporary injunction was not heard in view of its contempt in refusing to obey the order to produce. (R. pp. 7-11)

Upon July 30, 1956, petitioner filed, with the trial court, a motion to set aside or stay execution of the contempt decree pending review by the Supreme Court of Alabama. Petitioner also tendered miscellaneous documents which it alleged to be substantial compliance. At all times the corporation refused to produce the names and addresses of its members. This motion was denied and petitioner then filed a motion in the Supreme Court of Alabama, requesting stay of execution of the judgment below pending review by the appellate court. This motion or application was also denied.[1] On the same day the Circuit Court entered an order adjudging petitioner in further contempt, increasing the fine to $100,000.00, in view of its continued refusal to obey the order to produce. (R. pp. 11-15)

On August 8, petitioner filed a purported petition for writ of certiorari in the Supreme Court of Alabama. After oral argument on August 13, 1956,

1. 91 So. 2d 220.

the Supreme Court of Alabama, denied the writ on the grounds of insufficiency.[2]

Thereafter on August 20, 1956, petitioner filed a second petition for writ of certiorari.[3] Upon December 6, 1956, the Supreme Court of Alabama denied the writ requested in this petition.

SUMMARY OF ARGUMENT

I.

1. The United States Supreme Court does not review state court judgments based upon an adequate and independent nonfederal ground. **Herb v. Pitcairn,** 324 U. S. 117. The nonfederal basis of the judgment of the Supreme Court of Alabama is real and not illusory. Though **Ex parte Dickens,** 162 Ala. 272, 50 So. 218, holds certiorari the proper method to review contempt, the established law of Alabama is that mandamus is the proper method by which to review an order to produce. **Ex parte Hart,** 240 Ala. 642, 200 So. 783. Petitioner could have raised all constitutional questions in mandamus proceedings but elected or neglected to take such action though it had adequate time, fifteen days, before being required to produce the records. **Ex parte Morris,** 252 Ala. 551, 42 So. 2d 17, is of no avail to petitioner because in that case the writ of certiorari to review a contempt citation for failure to produce records was also denied. In both **Ex parte Morris** and the case at bar the Alabama Su-

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2. 91 So. 2d 221.

3. The grounds alleged by the petitioner in both the first and second petitions for certiorari appear at Record pages 16 and 17.

preme Court considered questions of constitutional law for the future guidance of lower courts but not as the basis of its decision.

2. The procedure to obtain the records was in keeping with established Alabama law. **Ex parte Monroe County Bank,** 254 Ala. 515, 49 So. 2d 161; and **Ex parte Baker,** 118 Ala. 185, 23 So. 996. The requested records were relevant both to issues raised by the motion to dissolve the injunction and those raised by the answer. The documents required could have been used to prepare affidavits on the motion to dissolve, as well as in presenting the case on the merits. **Profile Cotton Mills v. Calhoun Water Co.,** 189 Ala. 181, 66 So. 50. The nature and extent of the corporation's business within Alabama was the heart of the matter because upon it depended the jurisdiction of the court and the type and severity of sanctions, if any, to be imposed upon petitioner. **State ex rel. Griffith v. Knights of the Ku Klux Klan,** 117 Kan. 564, 232 P. 254, cert. denied 273 U. S. 664; and **People v. Jewish Consumptive Relief Society,** 196 Misc. 579, 92 N. Y. S. 2d 157.

3. The procedure of precluding from further proceeding with a case a party, which has refused to produce evidence necessary to determination of the issues therein, is neither novel, unfair or unconstitutional. Federal Rule of Civil Procedure 37(b); **Hammond Packing Co. v. Arkansas,** 212 U. S. 322. Nor is it unusual for a party in contempt to be prevented from further proceeding on the merits. **Jacoby v. Goetter Weil Co.** 74 Ala. 427.

4. Thus, it can be seen that the petitioner's own disregard for Alabama procedure placed it in the po-

sition where it could not test the validity of the order to produce but could either comply or stand in contempt.

5. The size of the fine was not excessive. **United States v. United Mine Workers of America,** 330 U. S. 258; and **Ex parte National Association for the Advancement of Colored People,** 91 So. 2d 214.

II.

1. The police power is one of those reserved to the states by the Tenth Amendment. That amendment is of equal dignity to the rest of the Constitution including amendments preceding and following it. A corporation, being an artificial entity, is subject to the restraints of the police power more than a natural person and has fewer rights. It has no right of privacy or privilege against self-incrimination. Corporations and membership associations are subject to the laws of a state within which they would operate whether that be of their domicile or not. **International Brotherhood of Teamsters, Local 695 A. F. L. v. Vogt, Inc.,** 354 U. S. 284; **Pierce v. Grand Army of the Republic,** 220 Minn. 552, 20 N. W. 2d 489; and **State Ex rel. Griffith v. Knights of the Ku Klux Klan,** 117 Kan. 564, 232 P. 254, cert. denied 273 U. S. 664.

2. It is a legitimate exercise of a state's police power and proper for its attorney general to proceed in equity to enforce laws enacted to protect its people even though the acts enjoined also be crimes. **State Ex rel. Griffith v. Knights of the Ku Klux Klan;** and **People Ex rel. Miller v. Tool,** 35 Colo. 225, 86 P. 224.

3. There is no reason why a membership cor-

poration devoted to propaganda, promotional activities, even good works, and the furthering of the interests of its members or of particluar groups should be exempt from the registration statutes of the states and the penalties for violating them. Such a corporation can commit the same torts as commercial ventures, the same crimes. In these days of mass media, complex and subtle methods of influencing public opinion the state and its people have a real interest in knowing the identity of those who would pool their powers as individuals in corporate form to achieve their ends. Those who act as a corporation must expect to be treated as a corporation.

III.

1. Corporations, associations, and similar organized groups concededly have a right of freedom of speech and press. They do not have a right of privacy or secrecy, **Joint Anti-Fascist Refugee Committee v. McGrath,** 341 U. S. 123, at pages 183 and 184; nor privilege against self-incrimination, **United States v. White,** 322 U. S. 694. They are not entitled to the privileges and immunities of natural persons nor, any more than a natural person, may they assert anothers rights. **Hague v. Committee for Industrial Organization,** 307 U. S. 496, at page 514.

2. The Fourteenth Amendment does not incorporate the first eight amendments. **Adamson v. California,** 332 U. S. 46; and **Wolf v. Colorado,** 338 U. S. 25.

3. Four cases are the basis of petitioner's claim that its freedom of speech and press and those of its members was unconstitutionally abridged. Of these

three, **Watkins v. United States,** 354 U. S. 178; **Sweezy v. New Hampshire,** 354 U. S. 234; and **United States v. Rumely,** 345 U. S. 41, deal with the assertion by a natural person of the right to remain silent concerning his political associations, or subscribers to his publications, or the subject matter of his speeches, when questioned by an investigative committee. The **Watkins** and **Sweezy** cases hold essentially that a person cannot be held in contempt for failure to answer questions which are not relevant to a well defined line of inquiry. The vagueness of the standard by which the person interrogated must judge his right not to answer makes a contempt conviction a denial of due process. The **Rumely** case was not decided on constitutional grounds. **Joint Anti-Fascist Refugee Committee v. McGrath.** has no majority opinion and at most can be construed as holding that an ex parte Attorney General's listing of an organization as "subversive" injures its reputation without granting the hearing which due process requires. It will be seen that in all these cases it was action by the sovereign upon the individual, not the danger of pressure by private persons upon members of an organization, which was held to be a violation of constitutional rights.

Pierce v. Society of Sisters, 268 U. S. 510, holds merely that a statute compelling all children to attend public schools deprives without due process private organizations of the property right to be in the education business.

Petitioner has justified its refusal to produce its records on the mere speculation of injury by private persons to its members. Private action is not state action. **United States v. Cruikshank,** 92 U. S. 542; and **Powe v. United States,** 109 Fed. 2d 147, (C. C. A. 5), cert. denied **United States v. Powe,** 309 U. S. 679.

ARGUMENT

I.

THE JUDGMENT BELOW, BASED UPON STATE PROCEDURE, LEFT NO FEDERAL QUESTION TO BE REVIEWED BY THIS COURT

1. The United States Supreme Court will not review a state court judgment based upon an adequate and independent nonfederal ground. The reason for this rule is obvious. It lies in the division of power between the state and Federal judicial systems. The power of the Supreme Court over state judgments is to correct them only to the extent that they adjudge Federal rights and not to pass upon state court opinions concerning Federal questions which are not necessary to the decisions. **Herb v. Pitcairn,** 324 U. S. 117.

Therefore, before this Court will review a state court case it must determine either that the decision of the state court was based upon a federal ground or that any nonfederal ground for the decision was inadequate by itself to support the state court judgment.

The petitioner attempts to show that the nonfederal ground for the decision of the Supreme Court of Alabama is illusory. It contends that the Alabama Court departed from a long standing State procedure permitting review of contempt proceedings by certiorari. That opinion reveals the error of this contention by citing **Ex parte Dickens,** 162 Ala. 272, 50 So. 218. Respondent does not concede, as petitioner states upon page 2 of its brief, that, because certiorari is the proper method of reviewing a contempt citation, the holding in the case at bar that mandamus was the

proper remedy to review an order to produce was in any way a departure from established State procedure. Rather, by mandamus the aggrieved party can obtain review without the danger of a contempt citation. The petitioner chose another course though it had ample time in which to have filed mandamus proceedings prior to July 25, 1956. The petitioner elected to test this order by refusal to obey thus subjecting itself to contempt proceedings. The Supreme Court of Alabama reviewed those contempt proceedings with a view to determine whether the trial court had jurisdiction of the person and subject matter, whether the proceedings were valid and regular on their face, and whether the lower court had exceeded its authority.

Petitioner, in the jurisdictional statement of its brief on the merits, touches lightly on this facet of the Alabama decision, but in its petition for certiorari relies upon **Ex parte Morris,** 252 Ala. 551, 42 So. 2d 17; **Ex parte Sellers,** 250 Ala. 87, 33 So. 2d 349, and similar cases, to show that the Supreme Court of Alabama used the device of State procedure to preclude review of its decision. Those cases cited by the petitioner fail wholly to support that contention. For example, in **Ex parte Morris,** the Alabama Supreme Court did not grant the writ of certiorari and then affirm the case but rather in the first instance denied the writ. After deciding that Morris' petition showed a direct contempt committed in the presence of the court, that due process was afforded the petitioner, and that no error appeared on the face of the record, the court denied the writ of certiorari, but deemed it advisable that the opinion further expose the views of the court for future guidance upon problems of this nature. The attention of this Court is called to the parallel in the opinion delivered by the Supreme Court of Alabama

It is true that, if objected to, oral testimony is not admissible on a motion to dissolve a temporary injunction, but affidavits are permitted. **Profile Cotton Mills v. Calhoun Water Co.,** 189 Ala. 181, 66 So. 50; and Title 7, Section 1061, Code of Alabama 1940. The names and addresses of petitioner's members were needed for the State's preparation of affidavits in opposition to the motion to dissolve. In this connection, it should be remembered that the petitioner's answer, while admitting some of the State's allegations, denied that it had solicited members for either the local chapters or the parent corporation or that it had organized local chapters within the State (R. p. 7). The Attorney General testified that the records would not be required if petitioner would admit that it was doing business within Alabama and disclose the nature and extent thereof. To this offer the petitioner did not agree.

Since the petitioner had filed an answer and submitted to the jurisdiction of the court, a trial on the merits could have followed immediately, whether or not the temporary injunction was dissolved. Thus, the State needed to examine the corporation's records in the aid of its preparation for trial. It is nowhere the rule that a party may not examine documents to be used in preparation of a case until such time as trial on the merits has commenced in court. The Federal

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5. Solicitation of funds or membership within a state is doing business so as to subject a corporation to state regulation and restraint. **People v. Jewish Consumptive Relief Society,** 196 Misc. 579, 92 N. Y. S. 2d 157; **State ex rel. Griffith v. Knights of the Ku Klux Klan,** 117 Kan. 564, 232 Pac. 254, cert. den. 273 U. S. 664; **and New York ex rel Bryant v. Zimmerman,** 278 U. S. 63.

Rules of Civil Procedure contain far reaching discovery procedures. Numerous states, such as New Jersey, have followed the lead of the Federal courts. And the penalties for refusing discovery can be severe. For example, Federal Rule of Civil Procedure 37(b) authorizes default judgment against a party contumaciously refusing to disclose documents necessary and relevant to the issues of a cause. As far back as **Hammond Packing Co. v. Arkansas**, 212 U. S. 322, it was held that when a defendant corporation disobeyed an order to secure the attendance of its officers, agents, directors and emploees as witnesses and refused production of books, papers and documents in their possession, it was not a denial of due process to permit the rendering of a default judgment against it. What some states have prescribed by statute, Alabama permits as a matter of common law.[6] This rule of denying a party in contempt the right to proceed further with a trial pending its purging itself of contempt, even when the flouted order was interlocutory, is recognized in other states. **Henderson v. Henderson**, 329 Mass. 257, 107 N. E. 2d 773.

Lest the action of the Alabama Supreme Court be lightly disregarded as a device to frustrate review by the United States Supreme Court, we reiterate that the corporation had fifteen days in which to have filed a petition for writ of mandamus to obtain review of

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6. **Ex parte Monroe County Bank**, 254 Ala. 515, 49 So. 2d 161; **Ex parte Baker**, 118 Ala. 185, 23 So. 996; **Goodall-Brown and Co., et al. v. Ray**, 168 Ala. 350, 53 So. 137; **Wilkinson v. McCall**, 247 Ala. 225, 23 So. 2d 577; and **Jacoby v. Goetter Weil Co.**, 74 Ala. 427.

the trial court's order to produce before being called upon to disclose its records. During this time petitioner's sole action was to file an answer which carefully avoided describing the character and extent of its activities in Alabama. Yet this answer, together with certain affidavits purporting to show that its members, if known, were subject to pressure by private citizens of Alabama, was offered as the excuse for its refusal to produce its corporate records. It was not until its attorneys had said that those records would not be produced and the corporation was held in contempt that the petitioner attempted to obtain from the appellate courts of Alabama review of the order making it produce its records.

As this Court has so often stated, it is constitutionally barred from reviewing a State court judgment resting on a nonfederal ground. The sovereignty of State's government, so fundamental to our constitutional system requires that this Court confine its review to those cases which inescapably present a federal question. Can it be said after reading the careful analysis of the applicable Alabama law contained in the opinion of the Supreme Court of Alabama in this case and the record on appeal, that the decision of a federal question was necessary to the conclusion to deny the writ? Rather, the petitioner's own inattention to and deliberate disregard of established procedures, similar to those recognized in other jurisdictions, placed the petitioner in its present dilemma.

II.

THE EQUITY PROCEEDING FOR INJUNCTION AND OUSTER WAS A REASONABLE AND WELL RECOGNIZED EXERCISE OF THE STATE'S POLICE POWER.

1. "The powers not delegated to the United States by the Constitution nor prohibited by it to the states, are reserved to the states respectively, or to the people."

Thus, reads the Tenth Amendment to the Constitution of the United States. Without it that Constitution, the authority by which all branches of the Federal government act, would not exist. It is a provision of equal dignity to all other portions of that Constitution, including those amendments which precede it in order or were adopted thereafter. It is true that in its history judicial interpretation has restricted the sovereign power of the states, but the police power has never been questioned as one of these reserved rights of the states without which they would cease to be sovereign entities. What are the limitations on this police power? That is what this Court must decide if it leaps the initial hurdle of deciding that the decision of the Supreme Court of Alabama in this case was necessarily based upon a Federal ground. In analyzing the extent of the police power of the several states in the context of this case it is helpful to examine what states other than Alabama have done to control the activities of domestic and foreign corporations within their borders.

That a corporation is an artificial entity subject to restraint by the sovereign which grants it life or

which permits it to function within the sovereign's boundaries is axiomatic. That a corporation does not have all the rights of a natural person, because of its artificial character, is also basic law. **Hale v. Henkel**, 201 U. S. 43; and **United States v. White**, 322 U. S. 694.

The petitioner herein would have this Court believe that, because it is a membership corporation which engages in propaganda and political activities and seeks to promote the interests of its members, it is entitled to wear a cloak of not only immunity but invisibility nullifying the constitutional power of the states to inquire into, regulate, and curtail its activities. It makes this claim in the face of the statutory and case law of the state of its origin.

We need not go beyond the New York General Corporation Law, Sections 210, 211 and 219, to see that a foreign corporation, which either does unlicensed business within New York or exceeds the powers which New York permits it to exercise within its borders, is subject to injunction and ouster.[7] Labor unions, which

7. The New York Membership Corporation Law, Section 10, empowers Justices of the State Supreme Court to pass upon the purpose of membership corporations and disapprove them if they offend either New York public policy or the individual Justice's opinion as to desirability of purpose. **Application of Catalonian Nationalist Club**, 112 Misc. 207, 184 N. Y. S. 132; **In re. General Von Steuben Bund**, 159 Misc. 231, 287 N. Y. S. 527.

8. **People v. Jewish Consumptive Relief Society**, 196 Misc. 579, 92 N. Y. S. 2d. 157.

are certainly entitled to as much consideration as this corporation, are also subject to state restraint."

However, even more strikingly in point with the case at bar, are three cases sustaining the power of the state to regulate another membership corporation whose charter also contains statements of worthy aims and ends, namely, **The Knights of the Ku Klux Klan.** The cases are, **State ex rel. Griffith v. Knights of the Ku Klux Klan,** 117 Kan. 564, 232 P. 254, cert. denied, 273 U. S. 664; **Knights of the Ku Klux Klan v. Commonwealth,** 138 Va. 500, 122 S. E. 122; and **New York ex rel. Bryant v. Zimmerman,** 278 U. S. 63. The petitioner would have it that these cases may be explained on the basis of judicial notice that the Klan is an organization based upon bigotry and committed to violence. Similarly, this Court is asked to take judicial notice of the noble character and purpose of petitioner based upon publications, periodicals and news reports whose accuracy, impartiality and reliability are not subject to the tests usually reserved for evidence admitted in court. If such judicial notice is permitted, an appellate record loses its value and briefs on appeal become a battle of magazine and newspaper opinion.

To return from this digression to the more fundamental issues in this case, the striking similarity of

9. **Doherty v. Mareschi, et al.,**
59 N. Y. S. 2d 542;
International Brotherhood of Teamsters v. Vogt, Inc.
354 U. S. 284;
Pacific Typesetting Co. v. International Typographical Union,
125 Wash. 273, 216 P. 358.

Kansas' successful action against the Ku Klux Klan to that which Alabama commenced againt this recalcitrant corporation, which would set itself above the law, is immediately evident. The Supreme Court of Kansas outlined, on the basis of a Commissioner's report, the activities of the Klan in Kansas. It sustained the ouster of the Klan, even though it was a membership corporation, while expressly accepting the commissioner's finding that the evidence was insufficient to show that the Klan engaged in violence and intimidation. The Supreme Court of the United States denied certiorari. Thus, despite the somewhat ambiguous conclusion to be drawn from denial of certiorari by the United States Supreme Court there is no ambiguity about the assertion of the right of Kansas to regulate and oust nonprofit membership corporations doing business within its borders. It is submitted that this case alone is sufficiently authority upon which to sustain the initial proceedings in Alabama.

2. Petitioner makes a somewhat halfhearted attack on the validity of the action for injunction and ouster upon the grounds that equity will not enjoin violation of statutes for which there is a criminal penalty. We do not quarrel with the general rule that equity will not aid in enforcement of a penalty nor the rule that equity will not act where there is an adequate remedy at law. But do those rules apply in this case? The fact is that this is not an action to enforce a penalty but rather to forbid the doing of an act which is also a crime. This last equity most certainly will do, as in the case of the enjoining of gambling houses and liquor nuisances even though both gambling and possession of illegal liquors are crimes. In the case at bar, the State had no adequate remedy at law since each act of solicitation of membership constituted a

separate violation of Title 10, Sections 194 and 195, Code of Alabama 1940. The multiplicity of criminal actions necessary to enforce these statutes against such an organization, its officers and agents is self-evident.

The interest of Alabama in protecting its citizens from an abuse of their personal and property rights is found in the declaration of the State policy of Title 10, Sections 192 and 193, Code of Alabama 1940, and the Constitution of Alabama 1901, Section 232. The **Griffith** case sustained the power of Kansas in a similar action to protect the similar rights of the people of Kansas. The power to protect by injunctive process was also sustained in **People Ex rel. Miller v. Tool,** 35 Colo. 225, 86 P. 224.

3. The reason why a corporation is subject to this regulation is that an artificial body, created by the State, is naturally limited by the rules set by its creator. Those who would unite in coporate form and enjoy its benefits must also accept its disadvantages. If they would act through a corporation, they must be prepared to be treated as a corporation. Now how is a membership corporation, devoted ostensibly to good works, political activity, and propaganda, but financed by membership subscriptions and solicited contributions, so different from the ordinary commercial corporation that it should be free from regulation, free from the restraints which the sovereign can ordinarily impose?

It can libel and slander, it can make and break contracts. By its agents it can commit torts or crimes, just as can the most crassly commercial venture. If it does these things, who is to be served, where is he to be found?

If petitioner should be free of regulation and restraint, why should not trade associations, manufacturers associations, advertising firms, all those who deal in public relations, be free of examination into their affairs on the theory that their primary function is to inform the public, to influence opinion and the resulting action, and in many cases, to persuade legislatures to specific ends and the public to particular political action? In these days of subliminal advertising and other subtle and indirect ways of obtaining the desired but not readily apparent ends of various groups, the right of the sovereign to know and the people to know who are these idea peddlers is fully as great as the right to trade in those ideas. In fact, the very right to dissent which the State must not destroy, which is so fundamental to our free society, can be destroyed by the unrestrained action of organizations who, because they claim noble aims and lofty purposes, also claim a constitutional right to secrecy and privacy. Yet the very power of these groups to act in concert in corporate or membership form is granted by the sovereign who most certainly must have the right to see that this power is neither abused nor misused.

III.

THE ORDER TO PRODUCE THE CORPORATION'S RECORDS INCLUDING NAMES OF MEMBERS AND SOLICITORS DID NOT DEPRIVE EITHER THE CORPORATION OR ITS MEMBERS OF THE LIBERTY GUARANTEED BY THE FOURTEENTH AMENDMENT.

In analyzing why the liberties of neither the corporation nor its members have been abridged, we shall discuss, first the constitutional rights of the corporation, second the fact that the corporation may not assert the rights of its members, and third the constitutional rights of those members.

1. At the outset it should be clearly understood what rights and liberties a corporation has, and which it does not have, guaranteed by the Fourteeth Amendment. We concede that a corporation has the First Amendment rights of freedom of speech and freedom of the press. We do not concede that a corporation has a privilege against self-incrimination, or freedom from a reasonable search or seizure to require production of corporate records. **Hale v. Henkel,** 201 U. S. 43; **United States v. White,** 322 U. S. 694; and **Rogers v. United States,** 340 U. S. 367. Nor does the Fourteenth Amendment incorporate the first eight amendments to the United States Constitution. It is only when the state intrusion is so shocking that it amounts to a denial of due process that state action is held to be unconstitutional. **Adamson v. California,** 332 U. S. 46, and **Wolf v. Colorado,** 338 U. S. 25. In this connection the rights of natural persons are of more concern to this Court than those of corporations.

Thus, we come to the rights of a corporation which are secured by the Fourteenth Amendment. Concededly, they include freedom of speech and freedom of press. They do not include freedom of association, a right of privacy, or the right to assert the privilege of others, including members. This Court has held that natural persons alone are entitled to the privileges and immunities of Section I of the Fourteenth Amendment. **Hague v. Committee for Industrial Organization,** 307 U. S. 496. But not even natural persons can invoke the constitutional rights of others. **Tileston v. Ullman,** 318 U. S. 44; and **United States v. Josephson,** (C. C. A. 2), 165 Fed. 2d 82, 89, cert. denied 333 U. S. 838.

2. The cases which petitioner claims support the contention that it may assert the rights of its members or at least may refuse to disclose the names of its members because of possible ill effects upon its operations are four. **United States v. Rumely,** 345 U. S. 41; **Joint Anti-Fascist Refugee Committee v. McGrath,** 341 U. S. 123; **Sweezy v. New Hampshire,** 354 U. S. 234; and **Watkins v. United States,** 354 U. S. 178. By a parlay of these four decisions petitioner attempts to justify a rule that a corporation may conceal the identity of its members if those members, once identified would tend to fall away from membership with a resulting loss of the corporate strength. As was pointed out on pages 14 and 15 of respondent's brief in opposition to the petition for writ of certiorari, this, when studied, is a somewhat involuted concept. Yet it has a deceptive simplicity similar to Decartes' famous dictum "I think, therefore I am." It has the same metaphysical quality of requiring an act of faith as the basis for the syllogism. Their reasoning seems to be: We are an organization of individuals; our individual members have certain constitutional rights, therefore we the

organization have those constitutional rights since we are the mere sum of all our members. This reasoning overlooks the nature of a corporation, which is something more than the mere sum of its individual members. Rather, it is an artificial entity through which the members act and which, because it permits them to shield themselves from certain personal liabilities, is subject to more restraints than a natural person.

It can be seen that Watkins and Sweezy were both asserting individual personal rights of freedom of speech and association. As we interpret the majority opinion in both cases it held that the two men were denied due process when compelled to answer questions concerning their associations and political connections in the absence of a showing that the questions were related to a well defined line of inquiry in which the sovereign had a substantial interest. Certainly, the **Watkins** case, is based upon the fact that the questions were so discursive, the directive of Congress and the investigating body's interpretation thereof so broad that Watkins had no way of telling what he might properly decline to answer and what he could not refuse. Thus, his prosecution was a denial of due process because no clear standard of conduct was established by which he could judge the legality of his actions. With **Sweezy,** the question was similar and the majority opinion seems to hold that the Attorney General's questions were not related to matters entrusted to his investigation by the legislature. Thus, the invasion of Sweezy's personal rights was not warranted and contempt based thereon was a denial of due process. In both cases, even though they sustained the right not to give information, the rights asserted were personal to individual citizens as contrasted with corporations.

Rumley's case involved the assertion of the right not to give certain information concerning persons who subscribed to his publications. No majority opinion sustained his refusal upon constitutional grounds. While Mr. Justice Black's concurring opinion dealt with freedom of the press and his thought was that the official harassment of people who bought Rumley's tracts might injure Rumley's business, to that extent abridging his exercise of freedom of spech and freedom of the press, it is clear that the opinion is concerned with the possibility of harassment of the press by public officials under the guise of obtaining information.

Joint Anti-Fascist Refugee Committee v. McGrath, 341 U. S. 123, has no majority opinion. The Justices agreed that the Committee had some standing to sue because the act of the Attorney General, in declaring the organization subsersive, injured its reputation naturally causing it to lose membership. It was characterizing it as subversive without a hearing which constituted denial of due process. It is true, that Mr. Justice Jackson expressed the thought that the organizations could assert the rights of their members. He also said, at pages 183 and 184, that corporations, organized groups or associations which solicit funds or memberships had no right of privacy or secrecy. The fact that members were held up to scorn and obloquy did not entitle them to secrecy. This can only be taken as meaning that memberships cannot be kept secret.

Pierce v. Society of Sisters, 268 U. S. 510, cited by petitioner for the proposition that a corporation may assert constitutional rights of others including their rights to free association, deals with none of these. It holds simply that an Oregon statute com-

pelling all children to attend public schools deprived, without due process of law, private organizations of their property rights to conduct schools. The action of the Oregon Legislature directly interferred with that property right.

3. At this point a very important distinction must be made between all these decisions and the case at bar. It is true that an Alabama court has ordered this corporation to reveal the names of its members and solicitors. But the interference, if any, with the rights of the corporation and its members are at best a matter of conjecture. And, in no event, consists of more than exposing of the members to public criticism and possible economic and social pressure by private individuals. Neither the privileges and immunties of the First Amendment nor the rights created by the Fourteenth Amendment are protected against individual as contrasted with state action. **United States v. Cruikshank,** 92 U. S. 542; and **Powe v. United States,** (C. C. A. 5) 109 Fed. 2d. 147, cert. denied **United States v. Powe,** 309 U. S. 679. Mr. Justice Jackson recognized the distinction in **Joint Anti-Fascist Refugee Committee vs. McGrath,** 341 U. S. 123, when he placed his decision that the rights of members were abridged, upon the basis that ex parte listing of an organization as subversive without a hearing resulting in an automatic dismissal of government employees who were members therein deprived these employees of their livelihood wthout due process.

4. The petitioner, at page 40 of its brief, attempts to show that it was denied due process by quoting two excerpts from a speech made by the learned trial judge almost a full year after the proceedings before him in the case at bar. It argues that

because he was opposed to integration, organizations committed to integration of the races could not receive a fair hearing before him. Likewise, might the Daily Worker, an organ of the Communist party, argue that no Federal or state judge could sit upon a case involving that publication, because all such judges must take an oath to uphold the Constitution of the United States; a priori committing themselves as foes of Communism. Such argument, and petitioner uses it to belabor all officials of Alabama in building up a picture of calculated denial of its rights, could be used to develop a sort of Parkinson's law that the more unpopular an organization is, the greater is its freedom from control and examination by the sovereign. New York, the petitioner's State of origin, recognizes no such rule. The New York Civil Rights Law, Section 53, compels membership corporations which require an oath as prerequisite or conditions of membership, with certain exceptions, to file a roster of their membership and list of their officers for each year. The constitutionality of this statute was upheld by the United States Supreme Court in **New York ex rel Bryant v. Zimmerman**, 278 U. S. 63.[10] It is difficult to see why Alabama may not obtain, by judicial order, evidence relevant to issues in a proceeding to enforce its corporation laws, similar to that which New York may constitutionally extract from corporations by virtue of a statute.

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10. New York also permits visitorial rights by the Supreme Court over membership corporation by statute: New York Membership Corporation Law, Section 26; and compels production of records by mandamus as a matter of common law. **Davids v. Sillcox**, 297 N. Y. 355, 81 N. E. 2d 353.

CONCLUSION

The petitioner neglected to avail itself of the established procedure of petition for writ of mandamus to review the trial court's order to produce. Therefore, the judgment of the Alabama Supreme Court was not based on any Federal ground and leaves nothing for this Court to review.

The action of the State of Alabama to enjoin and oust petitioner, a foreign corporation, which had violated the Alabama corporation laws, was a well recognized exercise of the police power of the State reserved to it by the Tenth Amendment.

No constitutional rights of either the corporation or its members were abridged by the commencement of an action for injunction and ouster and the requirement that the corporation produce records relevant to the issues in that action.

It is respectfully submitted that the writ of certiorari heretofore issued by this Court should be recalled or in the alternative the decision of the Alabama Supreme Court should be affirmed.

Respectfully submitted,

JOHN PATTERSON
Attorney General of Alabama

MacDONALD GALLION
Assistant Attorney General of Alabama

EDMON L. RINEHART
Assistant Attorney General of Alabama
Counsel For Respondent

JAMES W. WEBB
Assistant Attorney General of Alabama
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CERTIFICATE OF SERVICE

I, Edmon L. Rinehart, one of the attorneys for the respondent, The State of Alabama, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 18th day of October 1957, I served copies of the foregoing brief in opposition on Arthur D. Shores, 1630 Fourth Avenue, North, Birmingham, Alabama, by placing a copy in a duly addressed envelope, with first class postage prepaid, in the United States Post Office at Montgomery, Alabama, and on Thurgood Marshall, 107 West 43rd Street, New York, New York, by placing two copies in a duly addressed envelope, with Air Mail postage prepaid, in the United States Post Office at Montgomery, Alabama.

I further certify that this brief in opposition is presented in good faith and not for delay.

Edmon L. Rinehart

EDMON L. RINEHART
Assistant Attorney General of
Alabama
Judicial Building,
Montgomery, Alabama

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

NO. 91

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, A Corporation,

Petitioner

V.

STATE OF ALABAMA, Ex rel. JOHN PATTERSON ATTORNEY GENERAL

RESPONSE TO MOTION FOR LEAVE TO FILE BRIEF AS AMICI CURIAE

JOHN PATTERSON
Attorney General of Alabama

EDMON L. RINEHART
Assistant Attorney General of Alabama

COUNSEL FOR RESPONDENT

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

RESPONSE TO MOTION FOR LEAVE TO FILE BRIEF AMICI CURIAE

The State of Al[illegible]ia, in response to the motion for leave to file a [illegible]ef amici curiae, of the following organizations: American Jewish Congress; American Baptist Convention, Commission on Christian Social Progress; American Civil Liberties Union; American Friends Service Committee; American Jewish Committee; American Veterans Committee; Anti-Defamation League of B'nai B'rith; Board of Home Missions of the Congregational and Christian Churches; Council for Christian Social Action of the United Church of Christ; Japanese American Citizens League; Jewish Labor Committee; National Community Relations Advisory Council; United Synagogue of America; and Workers Defense League, opposes that motion.

It is inadvisable to permit, at this stage of the proceedings, the introduction of matters in the form of emotional and highly colored statements of opinion such as appear in the movants' brief, at pages 2 and 3 thereof. In fact, the movants have waited to file their motion until a third of the respondent's time to answer petitioner's brief has run. Paragraphs (2) and (3) of Rule 42, Revised Rules of the Supreme Court of the United States, when read together, indi-

cate that the motion for leave to file a brief amicus curiae, should be made in time for the brief to be filed within the time specified in paragraph (2) thereof. Thus, the motion for such leave was not presented timely within the meaning of that Rule. The tardiness of its presentation is further evident when it is seen that respondent would need additional time to prepare a brief or briefs answering those of both petitioner and the amici curiae. Thus, would the calendar of this Court need rearrangement, the prevention of which is one of the reasons for the terms of Rule 42.

Furthermore, with regards to American Jewish Committee; Anti-Defamation League of B'nai B'rith; Council for Christian Social Action of the United Church of Christ; National Community Relations Advisory Council; and United Synagogue of America, we are constrained to point out that none of these five organizations attempted at any time to obtain the consent of the State of Alabama to their joining in or filing a brief amicus curiae in this case, prior to the service of the motion now before the Court.

In addition, Rule 42, (3), Revised Rules of the Supreme Court of the United States, indicates that an applicant for leave to file an amicus curiae brief should show that the facts and law of the case have not or will not be adequately presented by either party to the case. While the movants state that they intend to show and, in fact, do urge that the State of Alabama denied petitioner due process of law, a study of petitioner's brief indicates that denial of due process is the basis of its demand for review of the decision of the State courts. That the movants have little relevant new material to offer is apparent from

the fact that their brief, at page 7, adopts the statement of the question presented, set forth in petitioner's brief, at page 2.

The real basis for the movants' application seems to be a belief in the quantitative rather than the qualitative theory of appellate argument. Like the oath helpers of Anglo-Saxon and early Norman England, movants subscribe to the theory that if enough people affirm a particular doctrine it must, a fortiori be the truth. It is submitted that the legislature is the proper forum in which weight of numbers should make itself felt and that the courts should be loath to permit additional parties with mere speculative interest to introduce complicating matter into the issues which the parties to an action have drawn already for themselves.

It is, therefore, respectfully requested that the motion of all movants for leave to file a brief amici curiae be denied.

Respectfully submitted,

JOHN PATTERSON
Attorney General of Alabama

EDMON L. RINEHART
Assistant Attorney General of Alabama

Attorneys for Respondent

CERTIFICATE OF SERVICE

I, Edmon L. Rinehart, one of the attorneys for the respondent, The State of Alabama, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 11th day of October 1957, I served copies of the foregoing response to motion for leave to file brief as amici curiae, on Leo Pfeffer, 15 East 84 Street, New York 28, New York, by placing three copies in a duly addressed envelope, with Air Mail postage prepaid, in the United States Post Office at Montgomery, Alabama.

I further certify that this response to motion for leave to file brief as amici curiae is presented in good faith and not for delay.

Edmon L. Rinehart

EDMON L. RINEHART

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Montgomery, Alabama

IN THE

Supreme Court of the United States

October Term, 1957

No. 91

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, a Corporation,

Petitioner,

v.

STATE OF ALABAMA, *ex rel.* JOHN PATTERSON, Attorney General.

On Writ of Certiorari to the Supreme Court of the State of Alabama

MOTION AND BRIEF OF *AMICI CURIAE*

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IN THE

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No. 91

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, a Corporation,

Petitioner,

v.

STATE OF ALABAMA, *ex rel.* JOHN PATTERSON, Attorney General.

On Writ of Certiorari to the Supreme Court of the State of Alabama

MOTION OF *AMICI CURIAE*

The undersigned, as counsel for American Jewish Congress; American Baptist Convention, Commission on Christian Social Progress; American Civil Liberties Union; American Friends Service Committee; American Jewish Committee; American Veterans Committee; Anti-Defamation League of B'nai B'rith; Board of Home Missions of

the Congregational and Christian Churches; Council for Christian Social Action of the United Church of Christ; Japanese American Citizens League; Jewish Labor Committee; National Community Relations Advisory Council; United Synagogue of America; and Workers Defense League, and on their behalf, respectfully move this Court for leave to file the accompanying brief as *amici curiae*.

The organizations that propose to submit this brief are private, voluntary associations of Americans formed to achieve specific purposes, religious, civic, educational, and others. As such, they have a direct interest in this proceeding which raises the question whether a state may constitutionally place prohibitions or crippling restrictions on the operation of a voluntary association similarly organized for a specific purpose, that of promoting equal rights for all, without discrimination based on race.

The record in this case shows that public officials of the respondent State of Alabama have attempted to frustrate the efforts of the petitioner National Association for the Advancement of Colored People (NAACP) on behalf of the rights of Negroes in Alabama and to outlaw it from the state. We are concerned with the implications of this assertion of governmental power irrespective of whether or not we support the aims of the NAACP in combatting racial inequality. It has become perfectly obvious that Alabama not only is attempting to maintain its statewide pattern of racial segregation but is also working for the destruction of all organized opposition to this policy. Alabama's effort to expel the NAACP has therefore placed in jeopardy the fundamental constitutional right of individuals to join together to form associations in order to express and advance their views.

The organizations that propose to submit the accompanying brief are deeply disturbed by this assault on freedom of association. Today, it is the NAACP that is subjected to attack. Tomorrow, the same measures

may be taken against any group that supports a cause opposed by state officials.[1]

In our complex society, the right individually to protest, individually to sue or to seek legislation is of but limited practical value by itself. Particularly in an atmosphere of extreme hostility, such as that which now confronts Southern opponents of racial segregation, the right to organize is protected, we believe, by the First, Fifth and Fourteenth Amendments against interference by government authorities.

In the accompanying brief, we argue that the order affirmed by the court below unreasonably restrains not only petitioner's freedom of association as guaranteed by the First and Fourteenth Amendments but also its liberty as guaranteed by the Fourteenth. The argument that petitioner's right to exist as an organization is a "liberty" within the meaning of that Amendment has not been developed in petitioner's brief.

We develop the argument that Alabama has unduly restrained freedom of association, as guaranteed by the First and Fourteenth Amendments, beyond its treatment in petitioner's brief, particularly showing that the right to freedom of association necessarily includes the right to preserve, as against unreasonable demands by the state, the anonymity of those who associate.

---

[1] That the NAACP is not the only possible target of oppressive measures may be seen in a part of a speech made by the trial court judge in this proceeding. In a speech made on July 11, 1957, Judge Jones said that (103 Cong. Rec. A 5888-9):

> "Many of our religious organizations, the NAACP, and it has the financial and moral backing of the American Jewish Congress in New York, committees of labor unions, and the Supreme Court of the United States, and both of the Nation's chief political parties, are all working together to achieve complete integration of the races, and this we know is the first step toward amalgamation, the consolidating and fusing into 1 race the 2, the white and black races."

We make the further argument, not made in petitioner's brief, that the action of the State of Alabama denies petitioner due process of law because it unduly burdens petitioner's exercise of Federal rights. Petitioner is an association that was organized, in large part, to win for Negroes equal protection of the laws as guaranteed by the Federal Constitution and statutes. This activity, we maintain, like other activities inherently protected by the Federal Constitution and statutes, is protected against undue restraint by the states.

Each of these arguments, if sustained, would require reversal of the order below.

We respectfully urge that acceptance of this brief *amici curiae* is especially appropriate. The organizations joining in this motion are directly interested in the question whether the Federal Constitution stands as an effective shield against oppressive action by a state designed to exclude from its territory any organization it dislikes. Furthermore, many of them have members in the State of Alabama. Since the measures taken against the NAACP here could be taken against any organization, the right of each of these organizations to exist, as well as that of the NAACP, is at stake.

We have sought the consent of counsel for both parties to the filing of this brief. Counsel for petitioner consented, but counsel for the State of Alabama refused consent.

Respectfully submitted,

LEO PFEFFER
Attorney for Amici
15 East 84th Street
New York 28, N. Y.

October 3, 1957

IN THE

Supreme Court of the United States

October Term, 1957

No. 91

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, a Corporation,

Petitioner,

v.

STATE OF ALABAMA, *ex rel.* JOHN PATTERSON, Attorney General.

On Writ of Certiorari to the Supreme Court of the State of Alabama

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BRIEF OF *AMICI CURIAE*

The following organizations respectfully submit this brief, as *amici curiae*, in support of the petitioner:

American Jewish Congress; American Baptist Convention, Commission on Christian Social Progress; American Civil Liberties Union; American Friends Service Committee; American Jewish Committee; American Veterans

Committee; Anti-Defamation League of B'nai B'rith; Board of Home Missions of the Congregational and Christian Churches; Council for Christian Social Action of the United Church of Christ; Japanese American Citizens League; Jewish Labor Committee; National Community Relations Advisory Council; United Synagogue of America; and Workers Defense League. Our interest in the issues raised by this case is set forth in the motion for leave to file a brief *amici curiae* annexed hereto.

Statement of the Case

The proceedings in this case are fully detailed in petitioner's brief (pp. 8-11) and will be only briefly summarized here.

The petitioner, National Association for the Advancement of Colored People (NAACP), is a New York membership corporation formed in part to promote equal rights for Negro citizens of the United States. Petitioner has maintained a Southeast Regional Office in Birmingham, Alabama, and has organized local affiliates in that state (R. 1-2, 6).

On June 1, 1956, the Attorney General of Alabama filed a bill of complaint in the Circuit Court of Montgomery County, Alabama, asking it to enjoin petitioner from conducting any business in that state. The bill of complaint charged petitioner with, among other things, not having registered as a foreign corporation as required by Alabama law and with having furnished legal help and financial assistance to persons challenging racial segregation at the University of Alabama and on the buses in the State capital (R. 1-2).

On the same day, the Circuit Court issued an *ex parte* temporary restraining order and injunction prohibiting petitioner from conducting any business, from maintaining

offices, organizing chapters or soliciting members, contributions or dues in the state. The court also enjoined petitioner—although the State's bill of complaint did not request it—from filing any document with Alabama officials that would qualify it to do business in the state (R. 2-3, 18-20).

Subsequently, on motion by the State, the court issued an order of discovery requiring petitioner to produce for inspection by the State a large number of records and documents including all correspondence in its Alabama files concerning certain Federal court suits challenging racial segregation and a list of all of its members in the state (R. 6, 20-22). The order was issued over petitioner's objection that it violated its constitutional rights (R. 6).

Petitioner, in its answer to the complaint, offered to comply at once with the registration statute (R. 7). Thereafter petitioner agreed to submit all the data required except its correspondence and membership lists (R. 11-13). The court held this to be insufficient compliance with its order and fined petitioner $100,000 (R. 14-15). The court never considered petitioner's motion to dismiss the original complaint and the restraining order issued thereunder (R. 16). Its judgment was affirmed by the Supreme Court of Alabama (R. 23-30). The proceeding is here on writ of certiorari to review that decision.

Question Presented

We adopt the statement of the Question Presented as set forth in petitioner's brief (p. 2):

> "Did the State of Alabama interfere with the freedom of speech and freedom of association and deny due process of law to petitioner, the NAACP, and its

members in violation of the Fourteenth Amendment in interfering with and prohibiting the continuation of the efforts of petitioner to secure and enforce rights of Negro citizens guaranteed by the Constitution and laws of the United States?"

Summary of Argument

Freedom of association is a liberty guaranteed against Federal infringement by the Fifth Amendment to the United States Constitution and against state infringement by the Fourteenth. In addition it is one of the co-equal guarantees of the First Amendment applied to the states by the Fourteenth. It is a freedom secured not only to the members of the association but to the association itself as well. In any event, the association has the status to assert and defend its members' freedom to associate in it.

Besides the general right of freedom of association enjoyed by petitioner, it is entitled to special Federal protection against state interference by reason of the fact that it is an organization whose purpose and activities are the protection of Federally secured rights, and as such may not be subjected to oppressive and burdensome state restrictions.

For these reasons the State of Alabama may not destroy petitioner or forbid its activities. Moreover, it may not indirectly effect the same result by imposing restrictions whose purpose and effect is to destroy petitioner or frustrate its activities. In view of the nature of petitioner and the climate in which it operates in the State of Alabama, a requirement that it make public its membership records constitutes the imposition of an oppressive burden whose effect is to prevent petitioner from carrying out its activities in that state.

In any event, an association, like an individual, has a constitutional right of anonymity which may not be governmentally impaired in the absence of some justification in terms of a lawful governmental objective. No such justification has been shown in this case and none in fact exists.

Hence, the order of the Alabama court forbidding petitioner to carry on its activities in that state and requiring it to disclose its membership is unconstitutional state action in deprivation of rights guaranteed by the Federal Constitution and should therefore be reversed and set aside.

ARGUMENT

POINT ONE

Freedom of association is a liberty guaranteed by the Fourteenth Amendment to the United States Constitution and is one of the co-equal guarantees of the First Amendment applied to the states by the Fourteenth.

A. Freedom to Associate as a Constitutional "Liberty"

At least since this Court's decision in *Meyer* v. *Nebraska*, 262 U. S. 390 (1923), it has been recognized that the liberty secured against state deprivation by the Fourteenth Amendment and Federal deprivation by the Fifth extends far beyond mere freedom from bodily restraint. The term "liberty," the Court said in that case (262 U. S. at 399),—

> "denotes not merely freedom from bodily restraint, but also the right of an individual to contract, to

> engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men."

This principle was re-asserted by this Court as recently as 1954. In *Bolling* v. *Sharpe*, 347 U. S. 497, 499, the Court, speaking through the Chief Justice, said:

> "Although the Court has not assumed to define 'liberty' with any great precision, that term is not confined to mere freedom from bodily restraint. Liberty under law extends to the full range of conduct which the individual is free to pursue, and it cannot be restricted except for a proper governmental objective."[1]

It is indisputable, we submit, that the associating together by men to pursue a common objective or, indeed, for no objective other than to enjoy each other's company is "conduct which the individual is free to pursue" in "the orderly pursuit of happiness by free men." Civilized society contemplates free and voluntary associations among the people. So long as man remains a gregarious being, his urge to associate with fellow men will be as vital and as compelling as his urge to live. A

[1] Dean Roscoe Pound has pointed out *(The Development of Constitutional Guarantees of Liberty* (1957), p. 48) that the Constitution was drafted by lawyers who took Lord Coke's comments on Magna Carta "for a legal Bible" and that Coke there described the word "liberties" as "meaning more than freedom of the physical person from arrest or imprisonment" but as including "the freedoms that men have."

constitutional provision protecting liberty against arbitrary governmental deprivation would have little meaning if it did not encompass the freedom of men to associate with each other.

What John Locke, in his *Letter Concerning Toleration* (1689), said about religious association has been recognized and accepted as part of our constitutional system in respect to all associations. A "society of members voluntarily uniting to [a common] end" is entitled to manage its own affairs and to be free from arbitrary governmental restrictions and restraints. A totalitarian state is by its nature suspicious of, if not actively hostile to, all associations not dominated by the state and looks to every such association as a potential rival if not enemy.[2] Our Anglo-American heritage on the other hand welcomes voluntary associations as an indispensable aspect of a democratic pluralistic society.

The state courts have uniformly recognized freedom to associate as a liberty constitutionally protected from arbitrary governmental restraint. As long ago as 1873, in *City of St. Louis* v. *Fitz*, 53 Mo. 582, a concurring opinion by Judge Sherwood of the Missouri Supreme Court condemned as unconstitutional on its face an ordinance making it a crime "knowingly to associate with persons having the reputation of being thieves and prostitutes." He declared that "its direct effect is to invade and necessarily destroy one at least of those 'certain inalienable rights' of the citizen bestowed by the Creator and guaranteed by the organic law, personal liberty." Although the majority of the court held only that the ordinance was unconstitutional as construed, a similar ordinance

[2] Suppression of independent associations is a normal and necessary feature of totalitarian regimes, both Communist (Fainsod, *How Russia is Ruled* (1954), pp. 109, 127, 320) and Fascist (Tolischus, *They Wanted War* (1940), pp. 143-4).

was subsequently declared unconstitutional on its face in *City of St. Louis* v. *Roche*, 128 Mo. 541 (1895). At that time, the Missouri court expressly approved Judge Sherwood's opinion in the *Fitz* case. In the *Roche* case, the court said (128 Mo. at 546):

> "If it can be made a penal offense for a person to associate with those of his own choosing, however disreputable they may be, when not in furtherance of some overt act of public indecency, or the perpetration of some crime, then it necessarily follows that by the same authority he may be compelled to associate with persons *not* of his own choosing."

The *Roche* decision was followed in *Ex Parte Smith*, 135 Mo. 223 (1896). Subsequently, a number of state courts followed the lead thus given by Missouri. *Ex Parte Cannon*, 94 Tex. Cr. R. 257 (1923); *City of Watertown* v. *Christnacht*, 39 S. D. 290 (1917); *Coker* v. *Fort Smith*, 162 Ark. 567 (1924) and *People* v. *Belcastro*, 356 Ill. 144 (1934). In the last cited case, the court summed up the holdings of the various cases in the statement that "No legislative body in this country possesses the power to choose associates for citizens" (356 Ill. at 148).[3]

Even where a "consorting with criminals" statute has been upheld, it has been on the basis that the statute required the association to be with intent to commit a crime. Thus, in sustaining the validity of section 722 of the New York Penal Law, which makes it a misdemeanor to consort with thieves and criminals "with intent to provoke a breach of the peace" and "with an unlawful purpose," the Court of Appeals said (*People* v. *Pieri*, 269 N. Y. 315, 322, 324 (1936):

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[3] The cases are discussed in Abernathy, "Right of Association," 6 So. Car. L. Q. 32, 46-47 (1953).

"The combination of intents, however, indicates that the association of these evil-minded persons must be to do or plan something unlawful. The consorting alone is no crime . . .

". . . Mere association of people of ill repute with no intent to breach the peace or to plan or commit a crime is too vague a provision to constitute an offense."

In sum, as de Tocqueville said more than a hundred years ago (*Democracy in America*, Vintage Edition (1954), Vol. I, p. 203):

"The most natural privilege of man, next to the right of acting for himself, is that of combining his exertions with those of his fellow creatures and of acting in common with them. The right of association therefore appears to me almost as inalienable in its nature as the right of personal liberty. No legislator can attack it without impairing the foundations of society."

Of course, like all other constitutionally protected rights, the right to associate is subject to reasonable restrictions where necessary for the protection of a paramount communal interest. We discuss below whether the limitation on petitioner's freedom imposed by Alabama is a reasonable restriction on this constitutional right.

B. Freedom of Association Under the First and Fourteenth Amendments

The First Amendment provides that:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press;

or the right of the people peaceably to assemble and to petition the Government for a redress of grievances."

This Court has declared that, "The right of peaceable assembly is a right cognate to those of free speech and free press and is equally fundamental." *DeJonge* v. *Oregon*, 299 U. S. 353, 364 (1937). The three rights, indeed, are "inseparable." *Thomas* v. *Collins*, 323 U. S. 516, 530 (1945). Thus the right of assembly is "an independent right similar in status to that of speech and press." Cushman, *Civil Liberties in the United States* (1956), p. 60.[4]

Like the other basic First Amendment freedoms, freedom of assembly is protected by the Fourteenth Amendment against unreasonable impairment by the states. *DeJonge* case, *supra*; *Whitney* v. *California*, 274 U. S. 357 (1927); *Thomas* v. *Collins*, *supra*; *Hague* v. *Committee for Industrial Organization*, 307 U. S. 496 (1939).

It is now also well established that freedom of assembly is not limited to occasional meetings but includes the organization of associations on a permanent basis.

[4] "The First Congress, while it was drafting the First Amendment, was clearly reminded that the three rights were part of a seamless web (1 Annals 759-761). At one point, Representative Sedgwick objected to inclusion of assembly with speech and press as being too trifling and obvious. "If people freely converse together they must assemble for that purpose, it is a self-evident, unalienable right which the people possess; it is certainly a thing that never would be called in question; * * *". He likened it to listing the right to put on one's hat. Representative Page noted that the right of assembly and, indeed, the right to wear a hat, had been infringed upon and it was necessary to protect the right of assembly because "If the people could be deprived of the power of assembling under any pretext whatsoever, they might be deprived of every other privilege contained in the clause."

Thus, "freedom of association" may be viewed as a right to conduct indefinitely continuing assemblies.[5]

Thus, in *Thomas* v. *Collins, supra,* this Court held that the right to discuss labor unions and to urge people to join them "is protected not only as part of free speech, but as part of free assembly" (323 U. S. at 532).

As early as 1927, this Court recognized freedom of association as a separate and independent right in holding that a California anti-syndicalism law was a restraint upon "the rights of free speech, assembly, and association" but that it was necessary to protect the state from serious injury. *Whitney* v. *California, supra,* 274 U. S. at 372. Subsequently, in *Joint Anti-Fascist Refugee Committee* v. *McGrath,* 341 U. S. 123, 141 (1951), the functioning of associations was described as "a legally protected right." *See also United Public Workers* v. *Mitchell,* 330 U. S. 75 (1947); *Bridges* v. *Wixon,* 326 U. S. 135, 163 (1945).

The constitutional status of freedom of association was most recently reaffirmed by this Court in *Sweezy* v. *New Hampshire,* 354 U. S. 234, 250 (1957).

[5] The constitutional synthesis is described in Emerson & Haber, *Political and Civil Rights in the United States* (1952), p. 248:

> "This right of association is basic to a democratic society. It embraces not only the right to form political associations but also the right to organize business, labor, agricultural, cultural, recreational and numerous other groups that represent the manifold activities and interests of a democratic people. In many of these areas, an individual can function effectively in a modern industrial community only through the medium of such organization * * *
>
> "The United States Constitution nowhere explicitly recognizes a right to form political organizations. * * * Yet it is generally accepted that the rights in the First Amendment to freedom of speech, press and assembly, and to petition the government for redress of grievances, taken in combination, establish a broader guarantee to the right of political association."

> "* * * Our form of government is built on the premise that every citizen shall have the right to engage in political expression and association. This right was enshrined in the First Amendment of the Bill of Rights. Exercise of these basic freedoms in America has traditionally been through the media of political associations. Any interference with the freedom of a party is simultaneously an interference with the freedom of its adherents."

Freedom of association has also been given international recognition. On December 10, 1948, the General Assembly of the United Nations, with the full approval and support of the United States, adopted the Universal Declaration of Human Rights, Article 20(1) of which declares:

> "Everyone has the right to freedom of peaceable assembly and association."[8]

Thus, freedom of speech, press, assembly and association are all part of one complex in which each supports the others. If any one is recognized, logic requires equal recognition of the rest. Conversely, impairment of any one necessarily impairs the effectiveness of the rest.

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[8] This provision came about as result of the activities of a committee appointed in 1945 by the American Law Institute. The committee, representing the "principal cultures of the world," published a "Statement of Essential Human Rights" (distributed by American United for World Organization). That group took pains to spell out the guarantee of freedom of association as distinct from freedom of assembly. Article Four of the Statement guarantees freedom of assembly. Article Five provides:

> "Freedom to form with others associations of a political, economic, religious, social, cultural, or any other character for purposes not inconsistent with these articles is the right of everyone."

See also *Beatty* v. *Gillbanks*, 9 Q. B. D. 308 (1882).

While we do not believe that freedom of association is limited to circumstances in which it is used to implement assertion of the other freedoms, it is at least true that it finds part of its justification in its ability to do so. This was aply spelled out by the Supreme Court of Massachusetts in a decision condemning a statute curbing political activity of labor unions. In *Bowe* v. *Secretary of the Commonwealth*, 320 Mass. 230, 252 (1946), the court said:

> "One of the chief reasons for freedom of the press is to ensure freedom, on the part of individuals and associations of individuals at least, of political discussion of men and measures, in order that the electorate at the polls may express the genuine and informed will of the people. (Citations omitted) Individuals seldom impress their views upon the electorate without organization. They have a right to organize into parties, and even into what are called 'pressure groups,' for the purpose of advancing causes in which they believe."

The late Mr. Justice Jackson, concurring in the *Joint Anti-Fascist* case, *supra* (341 U. S. at 187), noted that citizens must often

> "* * * pool their capital, their interests, or their activities under a name and form that will identify collective interests, * * * to permit the association or corporation in a single case to vindicate the interests of all."[7]

[7] It was this same need to pool strength and resources that was recognized by Chief Justice Taft in his classic defense of the right of workers to organize unions. *American Steel Foundries* v. *Tri-City Central Trades Council*, 257 U. S. 184, 209 (1921).

Mr. Justice Rutledge similarly noted (concurring in *U. S. v. Congress of Industrial Organizations*, 335 U. S. 106, 143-4 (1948)):

> "The expression of bloc sentiment is and always has been an integral part of our democratic electoral and legislative processes. They could hardly go on without it. Moreover, to an extent not necessary now to attempt delimiting, that right is secured by the guaranty of freedom of assembly, a liberty essentially coordinate with the freedoms of speech, the press, and conscience."

Judicial recognition of freedom of association as a constitutional right mirrors a fact of American life long recognized by observers of the American scene.[*] Alexis de Tocqueville remarked in 1840 that Americans form associations for every possible purpose. Noting that such joint activity was necessary in a democracy, he concluded that, "If men living in democratic countries had no right and no inclination to associate for political purposes, their independence would be in great jeopardy; • • •" (de Tocqueville, *supra*, Vol. II, p. 115).

Forty-eight years later, Lord Bryce similarly stressed the importance of associations in this country. He said (*The American Commonwealth*, Third Edition (1899), Vol. II, pp. 278-279):

> "Such associations have great importance in the development of opinion, for they rouse attention, excite discussion, formulate principles, submit plans, embolden and stimulate their members, produce that impression of a spreading movement which goes so far

[*] See the chapter, "Biography of a Nation of Joiners," in Schlesinger, *Paths to the Present* (1949), pp. 23-50. The special importance of the group as "the basic political form" is stressed in Latham, *The Group Basis of Politics* (1952), p. 10.

towards success with a sympathetic and sensitive people * * * this habit of forming associations * * * creates new centres of force and motion, and nourishes young causes and unpopular doctrines into self-confident aggressiveness."

President Lowell of Harvard University said in 1914 (*Public Opinion and Popular Government*, American Citizen Series, p. 39):

"Freedom of expressing dissent includes liberty of organization, and in order that this may be completely effective it must not be confined to purely political objects, but must become a part of the popular customs, covering all matters in which people are interested."

This theme was reiterated most recently by the late Professor Chafee (*The Blessings of Liberty* (1956), pp. 150-151):

"If we look over our national history, we see that many of the most significant political and social changes began with the efforts of some small informal group disliked by the ordinary run of citizens. The abolition of slavery grew out of Garrison's Anti-Slavery Society and similar associations. The Nineteenth Amendment is the culmination of the activities of a few unpopular women in the middle of the last century. The popular election of Senators, the federal income tax, and several other reforms largely originated with the Grangers and the Populists * * *. Under modern conditions, freedom of speech under the First Amendment is likely to be ineffective if it means only the liberty of an isolated individual to talk about his ideas. Indeed, from the very beginning, freedom of speech has involved the liberty of a number of individuals to associate themselves for the advocacy of a common purpose

whether they exchange ideas in a hall or by mail like the Committees of Correspondence before the Revolution. Thus, freedom of speech and freedom of assembly fit into each other. They are both related to the possibility of petitioning Congress and the state legislatures for redress of grievances, which is only part of the wider freedom to submit the views of the individual or the group to the people at large for judgment."

An apt summary is supplied by a South Carolina political scientist (Abernathy, "Right of Association," 6 So. Car. L. Q. 32, 75-76 (1953)):

"Associations have a place of particular importance in a democracy, whether they are associations of laborers, professional men, or electors and office-seekers. They serve as a training ground for group participation, organization and management of people and programs, and for democratic acceptance of the majority will. They can also serve as a potential influence for improvement of communication between the individual and the government. Concerted demands for action by associations of people have a better chance for accomplishing the desired governmental action than do scattered individual requests. And the information furnished to administrators and legislators by private associations of various kinds is in many instances vital to the intelligent treatment of particular problems."

It is not surprising therefore to find that at least 5,000 national associations exist in the United States. (Rose, *Theory and Method in the Social Science* (1954), pp. 52n, 55-56.)

C. The Association's Freedom of Association

We submit that the freedom of association guaranteed by the Constitution is enjoyed not merely by the individual members of the association but by the association itself. Indeed, freedom of association would be of little value if only the individual members could assert judicially a claim to its protection, for the justification for freedom of association lies in the recognition that unorganized individuals are frequently unable or unwilling to assert the rights that lie at the foundation of a democratic society. Accordingly, this Court has frequently recognized and acknowledged the status of an association to assert its members' right that the association be permitted to exist and to conduct its activities free of unreasonable and oppressive government restrictions.

Pierce v. *Society of Sisters*, 268 U. S. 510 (1925), we submit, is exactly in point. In that case, this Court, following *Meyer* v. *Nebraska*, *supra*, held that the right of parents to have their children educated in private schools was a constitutionally protected liberty under the Fourteenth Amendment. But the right was not asserted by any parent; no parent was a party to the litigation between the private association conducting the school and the State of Oregon. Nevertheless, the Court expressly allowed the association to assert the right.

Determinative too, we submit, is *Joint Anti-Fascist Committee* v. *McGrath*, *supra*, wherein this Court recognized the constitutional right of associations to be free from arbitrary governmental action whose "effect is to cripple the functioning and damage the reputation of those organizations in their respective communities and in the nation"

(341 U. S. at 139). In *Kedroff* v. *St. Nicholas Cathedral*, 344 U. S. 94 (1952), this Court recognized the right of a religious association to assert judicially its members' constitutionally protected freedom of worship and its own right to freedom from arbitrary governmental interference with its activities.[9] These and other decisions of this Court (*e.g.*, *Adler* v. *Board of Education*, 342 U. S. 485 (1952); *American Communications Association* v. *Douds*, 339 U. S. 382 (1950); *United Public Workers* v. *Mitchell*, 330 U. S. 75 (1947)) expressly or implicitly recognize the status of an association to assert in its own right the constitutional freedom from arbitrary restraints upon its existence or its activities.[10]

POINT TWO

An organization whose purpose and activities are the protection of Federally secured rights may not be subjected to oppressive and burdensome state restrictions.

We have sought to show above that the petitioner herein and its members enjoy a constitutionally protected freedom of association immune from arbitrary and unreasonable state restraints. It also has a right of narrower scope, predicated on the particular nature of the organization and the organized activity here affected. We here argue that the activities of petitioner in seeking enforcement of Federally secured rights are entitled to protection from oppressive or burdensome state interference, wholly aside from its rights as a lawful association.

[9] See also: Howe, "Political Theory and the Nature of Liberty," 67 Harv. L. Rev. 91 (1953); Figgis, *Churches in the Modern State* (1951); Laski, "The Personality of Associations," 29 Harv. L. Rev. 404 (1916).

[10] See also Comment: "State Control of Political Organizations: First Amendment Checks on Powers of Regulation," 66 Yale L. J. 545, 546-550 (1957).

A. The Nature of Petitioner's Activity

The formation, organization and structure of the NAACP are described in its brief (pp. 2-7). As there clearly appears, one of the primary purposes of the Association and its principal activity is protection of the rights of equality guaranteed by the United States Constitution and by Federal statutes.

The State of Alabama has itself placed that fact beyond dispute. One of its complaints against the Association, on which it based its demand that its activities be terminated, was the fact that the Association had supported efforts to end state-enforced racial segregation (R. 2). This proceeding was thus avowedly designed to frustrate efforts to vindicate Federally secured rights. The order issued by the trial court has accomplished that aim. The barrier to vindication of constitutional guarantees has been erected by action of the state, through its executive and judicial branches.

B. Petitioner's Activities in Vindication of Federally Secured Rights May Not Be Unduly Burdened by the State

We submit that the petitioner's interest in the vindication and enforcement of Federal constitutional and statutory guarantees stands on the same footing as other Federally secured interests that this Court has protected from undue burden by the states.

Thus, this Court has repeatedly invalidated state laws burdening interstate commerce. See, for example, *Buck v. Kuykendall*, 267 U. S. 307 (1925); *Fidelity and Deposit Co. v. Tafoya*, 270 U. S. 426 (1926); *Hanover Insurance Co. v. Harding*, 272 U. S. 494 (1926); *Southern Pacific Company v. Arizona*, 325 U. S. 761 (1945); *Morgan v. Virginia*, 328

U. S. 373 (1946). It has similarly condemned limitations on the movement of individuals from state to state. *Crandall v. Nevada*, 73 U. S. (6 Wall.) 35 (1867); *Edwards v. California*, 314 U. S. 160 (1941). It has curbed state legislation restraining exercise of rights created by Federal laws. *Hill v. Florida*, 325 U. S. 538 (1945). In *Slochower v. Board of Higher Education*, 350 U. S. 551 (1956), this Court struck down a statute penalizing the exercise of the Fifth Amendment privilege against self-incrimination, noting that (350 U. S. at 558):

> "The heavy hand of the statute falls alike on all who exercise their constitutional privilege, the full enjoyment of which every person is entitled to receive."

Particularly significant to the instant proceeding is the protection that has been given to the right to invoke the processes of the Federal courts. In *Terral v. Burke Construction Co.*, 257 U. S. 529 (1922), that right was held paramount to the very state interest involved here, regulation of foreign corporations. This Court invalidated an Arkansas law that prohibited foreign corporations from doing business in Arkansas if they availed themselves of the right to start suits in a Federal court or have them removed to such a court. In words clearly applicable here, Chief Justice Taft said that condemnation of the statute (257 U. S. at 532-3)

> "* * * rests on the ground that the Federal Constitution confers upon citizens of one State the right to resort to federal courts in another, that state action, whether legislative or executive, necessarily calculated to curtail the free exercise of the right thus secured is void because the sovereign power of a State in excluding foreign corporations, as in the exercise of all others

of its sovereign powers, is subject to the limitations of the supreme fundamental law."

The mere fact that the State of Alabama has the right to regulate the operation of foreign corporations within its borders does not give it *carte blanche* to curb their activities in asserting Federal rights. Justice Holmes pointed this out in *Fidelity* v. *Tafoya*, *supra* (270 U. S. at 434):

> "But it has been held a great many times that the most absolute seeming rights are qualified, and in some circumstances become wrong. One of the most frequently recurring instances is when the so-called right is used as part of a scheme to accomplish a forbidden result. *Frick* v. *Pennsylvania*, 268 U. S. 473. *American Bank and Trust Co.* v. *Federal Reserve Bank of Atlanta*, 256 U. S. 350, 358. *Badders* v. *United States*, 240 U. S. 391, 394. *United States* v. *Reading Co.*, 226 U. S. 324, 357. Thus the right to exclude a foreign corporation cannot be used to prevent it from resorting to a federal court, *Terral* v. *Burke Construction Co.*, 257 U. S. 529; or to tax it upon property that by established principles the State has no power to tax, *Western Union Telegraph Co.* v. *Kansas*, 216 U. S. 1, * * *."

The *Crandall* case, *supra*, makes it clear that the government and the citizen are equally entitled to demand protection against such interference. This Court there pointed out that the Federal government frequently has need to move its officials from state to state and could not permit taxes on such movements. It went on (73 U. S. at 44):

> "But if the government has these rights on her own account, the citizen also has correlative rights. He has the right to come to the seat of government to assert any claim he may have upon that government, or to transact any business he may have with it. To seek its protection, to share its offices, to engage in administering its functions * * * and this right is in its nature independent of the will of any State over whose soil he must pass in the exercise of it."

We submit that the State of Alabama denies petitioner due process of law when it uses its courts to prevent or deter the petitioner from furnishing legal counsel to an Alabama citizen in a proceeding designed to test the State's "policy of denying entrance to Negroes" (R. 2), or to prevent it from supporting action "to compel the Capitol Motor Lines of Montgomery, Alabama, to seat passengers without reference to race" (R. 2). These allegations in the State's complaint make it plain that the proceeding instituted by Alabama was intended to halt and has in fact halted legitimate efforts to invoke Federal law. It was thus "part of a scheme to accomplish a forbidden result." *Fidelity* v. *Tafoya*, quoted *supra*.

It is no answer to say that the State of Alabama has not interfered with individuals seeking to vindicate Federal rights but only with those who offer them organized support. We have shown above that organization is virtually essential to the advancement of unpopular causes in today's complex society. It is plain enough, as Professor Arthur Schlesinger says (*op. cit.*, *supra*, at p. 49), that:

> "The burden of championing minority rights and unpopular causes has fallen on other types of associa-

tions, notably humanitarian, labor and reform bodies. These have helped educate the public to the need for continuing change and improvement and in their aspects as pressure groups have done much to keep legislatures and political parties in step with the times."

Petitioner's activities are designed to give reality to Federal constitutional guarantees. The national interest in the same end requires this Court to remove unwarranted restraints upon efforts to achieve it.

POINT THREE

The State of Alabama may not directly destroy petitioner or forbid its activities.

A. The Special Nature of the Right Claimed

We have shown that the right of association is protected by the First and Fourteenth Amendments. We contend that this right, especially when, as here, it is exercised with a view to vindication of other constitutionally-protected rights in the Federal courts, is among "those liberties of the individual which history has attested as the indispensable conditions of an open as against a closed society [and which therefore] come to this Court with a momentum for respect lacking when appeal is made to liberties which derive merely from shifting economic arrangements." Mr. Justice Frankfurter, concurring in *Kovacs v. Cooper*, 336 U. S. 77, 95 (1949).

The right of association, as exercised by petitioner and as sought to be abridged by respondent, is one of the rights which lie "at the foundation of free government by free men. * * * In every case, therefore, where legis-

lative abridgement of the rights is asserted, the courts should be astute to examine the effect of the challenged legislation. Mere legislative preference or beliefs respecting matters of public convenience may well support regulation directed at other personal activities, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions." *Schneider* v. *New Jersey*, 308 U. S. 147, 161 (1939).

In weighing the state action here attacked against the right here asserted, it should be remembered that "the usual presumption supporting legislation is balanced by the preferred place given in our scheme to the great, the indispensable democratic freedoms secured by the First Amendment." *Thomas* v. *Collins*, 323 U. S. 516, 530 (1945). Much more than a mere "rational basis" must be shown to justify state interference with the fundamental right sought to be exercised by petitioner.

B. Alabama Has Not Demonstrated the Necessity for Its Restrictive Action

As against the societal interest in preserving freedom of association, and the special Federal interest in protecting activities for the vindication of Federally secured rights, what can Alabama offer as justification for the order it has sought and obtained from its courts prohibiting petitioner from functioning? The only apparent goals of the proceeding initiated by the state are enforcement of its law requiring registration of foreign corporations[11] and prevention of anti-segregation activity.

The first of these goals is manifestly insufficient to justify the Draconian action taken here. As petitioner

[11] We take no position on whether the Alabama statute dealing with foreign corporations (Ala. Code, 1940, Title 10, Secs. 192, 193, 194) actually requires petitioner, a non-profit membership corporation, to register or whether the statute is valid as so applied.

has amply shown in its brief (pp. 32-38), if Alabama sought only the enforcement of its registration statute, it was entirely unnecessary to put the Association out of business by a judicial order, entered without notice or hearing. Moreover, in view of petitioner's assertion, early in the proceeding, that it was prepared to comply with the registration requirement (R. 7), the continuation of the proceeding and the court's order prohibiting the Association from complying patently had a deeper motivation.

This can be found in the allegations in the State's original bill of complaint that petitioner was engaged in anti-segregation activities and that it was causing "irreparable injury to the property and civil rights of the citizens of Alabama" (R. 2). The allegations of petitioner's anti-segregation activity are the only part of the bill of complaint that can account for the State's insistence that petitioner immediately cease operations. Moreover, the measures taken against the NAACP here are part of a pattern of similar steps taken by other states, all designed to make it impossible for the NAACP to operate (*Assault Upon Freedom of Association, A Study of the Southern Attack Upon the National Association for the Advancement of Colored People*, American Jewish Congress (1957)).

But Alabama's interest in halting anti-segregation activity (presumably in order to "protect the public against false doctrine," Mr. Justice Jackson concurring in *Thomas* v. *Collins*, *supra*, 323 U. S. at 545) certainly cannot outweigh the constitutional objective of protecting freedom of association and protecting vindication of Federally secured rights. Indeed, that interest cannot even claim a place in the scales. The segregation that Alabama seeks to preserve at its State University and on the bus lines in its State capital has been specifically condemned by this and other Courts. *Gayle* v. *Browder*, 352 U. S. 903 (1956),

affirming 142 F. Supp. 707; *Brown* v. *Topeka*, 347 U. S. 483 (1954); *Sweatt* v. *Painter*, 339 U. S. 629 (1950). The obligation of the State of Alabama toward petitioner and its members is to grant them "protection in the lawful exercise of their rights as determined by the courts" and not "to make that exercise impossible." *Sterling* v. *Constantin*, 287 U. S. 378, 402 (1932).

POINT FOUR

The State of Alabama may not indirectly destroy petitioner or frustrate its activities by requiring it to expose its membership lists.

A. Indirect Destruction and Frustration by Oppressive Burdens

If freedom to associate may not be directly forbidden, the same result cannot constitutionally be achieved by imposing burdensome conditions that effectually prevent or unduly harass its exercise. *Hannegan* v. *Esquire*, 327 U. S. 146 (1946); *Murdock* v. *Pennsylvania*, 319 U. S. 105 (1943). This was plainly established by this Court in its successive decisions in *Pierce* v. *Society of Sisters*, *supra* and *Farrington* v. *Tokushige*, 273 U. S. 284 (1927). In *Pierce*, this Court held that a state could not constitutionally prohibit the operation of private schools. Two years later, in *Farrington*, it held equally unconstitutional minute and detailed government regulation that would have made their operation difficult if not impossible. As the *Pierce* case held that a private, voluntary educational association could not constitutionally be outlawed, the *Farrington* case held that the operations of such an association could not constitutionally be subjected to oppressive and burdensome regulations.

B. The Oppressive Burden of Compulsory Exposure

The mantle of protection that the Constitution throws over the right to hold and espouse political, religious and other views is designed primarily for those who adhere to unpopular causes, those who advance the "opinions we loathe." (Justice Holmes dissenting in *Abrams* v. *U. S.*, 250 U. S. 616, 630 (1919).) No Bill of Rights is needed to protect what is popular and conventional. Thus, we must assume, in testing any proposed application of the constitutional guarantees, that the cause in question is repudiated and actively opposed by the majority of the community and, probably, by those who control the government as well.

In this case, however, it is not necessary to hypothesize the unpopularity of the cause. Here, not only unpopularity but official hostility is plainly shown. We need not repeat the ample demonstration made in petitioner's brief (pp. 12-17) that any Negro in Alabama whose affiliation with petitioner becomes public runs a substantial risk of economic retribution and even physical violence.

Indeed, in at least one respect, punishment is imposed by agencies of the respondent itself. Under local laws adopted by the State legislature, the boards of education of two Alabama counties are authorized to discharge public school teachers who belong to organizations advocating racial integration (R. 13). If petitioner produced its membership lists containing the names of teachers in those counties, their jobs would be forfeited under these laws.

In *Joint Anti-Fascist Refugee Committee* v. *McGrath*, *supra*, it was recognized that the climate in which an organization exists and carries on its activities is a reality that must be considered in determining whether the organization has been accorded due process of law. The Court

there sustained the legal sufficiency of a complaint which alleged that the action of the Attorney General "caused many contributors, especially present and prospective civil servants, to reduce or discontinue their contribution to the organization; members and participants in its activities have been 'vilified and subjected to public shame, disgrace, ridicule and obloquy * * *' thereby inflicting upon it economic injury and discouraging participation in its activities; it has been hampered in securing meeting places; and many people have refused to take part in its fund-raising activities" (341 U. S. at 131).

The oppressive effect of exposure was also clearly recognized in the recent case of *Watkins* v. *U. S.*, 354 U. S. 178, 197 (1957) wherein this Court stated that when "forced revelations concern matters that are unorthodox, unpopular, or even hateful to the general public, the reaction in the life of the witness may be disastrous."

The very factors that justify protection of freedom of association in a democracy require also that organizations be protected from prying by an unfriendly government. If association "nourishes young causes and unpopular doctrines into self confident aggressiveness" (Bryce, *supra*), it is only after they have grown strong enough to "produce that impression of a separate movement which goes so far towards success" (*ibid*). At the early critical formative stage of a movement, anonymity may well mean the difference between life and death.

The close relationship of anonymity to effective organization has received express recognition under the Federal statutes guaranteeing the right of employees to organize labor unions. As petitioner's brief clearly demonstrates (pp. 27-29), the rights created by the Wagner Act would be illusory if the employer were free to discover the names of the first employees to join. Hence, the National Labor Relations Board and the courts have held that the right

to organize necessarily includes the right to do so secretly, as petitioner has shown in its brief.[12]

We submit, therefore, that state-compelled disclosure of the membership of an unconventional or unpopular association destroys its effectiveness and frustrates performance of its constitutionally protected activities. Such state compulsion is as violative of First and Fourteenth Amendment rights as is direct destruction of the association or prohibition of its activities, unless it is necessary to achieve a paramount state objective. We show below that no such justification appears here.

C. The Constitutional Right of Anonymity

Aside from the harrassing aspect of the requirement of exposure, we believe that it impairs a constitutional right of anonymity that may not be infringed in the absence of an overriding communal interest which the state is constitutionally competent to protect. The right of anonymity is an incident of a civilized society and a necessary adjunct to freedom of association and to full and free expression in a democratic state.

In *Watkins* v. *U. S.*, *supra*, this Court said (354 U. S. at 187):

> "There is no general authority to expose the private affairs of individuals without justification in terms of the functions of Congress."

What is true of individuals, we believe, is true of associations; and what is true of Congress is true of all other agencies of government, Federal and state. Government may not, without justification, pierce the veil of anonymity.

[12] The matter of union secrecy is dealt with in detail in the government's brief *amicus curiae* in *Thomas* v. *Collins*, *supra*, 1944 Term, No. 14, pp. 21-31.

It is also worth noting that, despite the large number of state statutes passed in the last fifteen years substantially restricting union activities, none requires exposure of membership lists.

D. The Place of Anonymity in a Democratic Society

It is important to recognize that there is nothing inherently wrong in desiring to keep one's name from the public. Anonymity has a long and honorable history and may serve important social objectives. The cause of civilized progress was greatly benefited by the fact that Daniel Defoe could publish anonymously his *Shortest Way with the Dissenters*, and it was correspondingly greatly harmed when Defoe's identity was discovered and he was fined and pilloried for his offense (Minto, *Daniel Defoe* (1909), pp. 38-40).

In this country, even before the founding of our republic, the practice of speaking anonymously on social and political matters was accepted as normal and proper. Benjamin Franklin signed his first pieces for the *New England Courant* as "Silence Dogwood" (Bleyer, *Main Currents in the History of American Journalism* (1927), pp. 56-57). The use of names like "Philanthrop," "Humanus" and "Cato" as signatures on articles on public affairs was widespread (*Id.*, pp. 43-100). In 1775, Thomas Paine used the signature "Humanus" in an article for the *Pennsylvania Journal*; after Rev. William Smith, president of the University of Philadelphia, used the name "Cato" in attacking Paine's *Common Sense*, Paine replied under the name of "Forester." (*Id.*, p. 91). The *New Hampshire and Vermont Journal or Farmers' Weekly Museum* regularly published articles in the 1790's written by such persons as "The Lay Preacher," "Peter Pencil," "Simon Spunkey," "Peter Pendulum" and "The Pedlar" (*Id.*, p. 128).

The most famous of all American political writings, *The Federalist*, written by Alexander Hamilton, James Madison and John Jay, was published anonymously. In-

deed, the attribution of several of the essays is still in doubt. As Professor Earle points out (*The Federalist*, Modern Library edition (1937), Introduction, p. ix), during the controversy over the endorsement of the Constitution, "The press of the day was submerged with contributions from anonymous citizens." Among those anonymously opposing ratification was New York's Governor George Clinton, who wrote under the name "Cato." (See the introduction by Paul Leicester Ford to the Henry Holt edition of *The Federalist* (1898), pp. xx-xxi.)

Thus, in the early days of our Republic, persons who were or were to become President of the United States, Chief Justice of the Supreme Court, Secretary of the Treasury and Governor of New York did not hesitate to maintain their anonymity in publishing weighty public and political documents.

This practice is still used by public officials. *Foreign Affairs*, the United States' most influential periodical dealing with international policy, has frequently in recent years masked the names of its contributors, carrying leading articles signed simply by single initials, including the famous "X" article, "The Sources of Soviet Conduct," which set forth the Government's policy towards the Soviet Union (*Foreign Affairs*, Vol. 25, Nos. 1 & 4, Vol. 27, No. 2, Vol. 36, No. 1).

The millions of Americans who are members of secret fraternal orders certainly believe firmly in their right to operate anonymously (Schlesinger, *op. cit., supra*, at p. 44). Professor Schlesinger describes them as playing a "positive and continuing role in society" (*Id.*, p. 48).[13]

[13] A vigorous warning against the growing tendency to limit privacy and force all our activities into the glare of government supervision and public inspection is made by Professor Lasswell "The Threat to Privacy," in MacIver, ed., *Conflict of Loyalties* (1952), pp. 121-140.

E. Anonymity as an Aid to Free Expression

In a number of ways modern society recognizes anonymity as a valuable aid in assuring free expression of opinion. It is standard practice for newspapers to print letters signed with initials or fictitious names. While the editors require that the writer disclose his name to them, they recognize that a freer expression of opinion can be achieved if they do not require public exposure of the writer's identity.

Public opinion researchers similarly accept the fact that some persons will hesitate to express themselves freely and honestly if they think that there is a chance that their names will ultimately be associated with the answers they give. In *Interviewing for NORC* (1945), the National Opinion Research Center, which has conducted surveys for many government agencies, advised its employees (p. 15):

> "A few persons may be reluctant to talk if they feel their names will be taken. You can explain that NORC *never* wants the name of anyone who doesn't want us to have it."

That the loss of anonymity can have a serious effect on free expression of opinion is recognized in the book, *How to Conduct Consumer and Opinion Research*, Blankenship, ed. (1946). The essay on "Measurement of Employees' Attitude and Morale," advises employers to place (pp. 223-4)

> "• • • emphasis on the point that the questionnaires must not be signed, that no one in the company will have access to the answered questionnaires, that there is no means of identifying a particular person's

> blank. All of the mechanics of distributing the questionnaire forms and the placing of the answered forms in the ballot box are such as to guarantee anonymity to the employee."

In the same book, the essay on "Trends in Public Opinion Research" describes conclusions drawn by the Office of Public Opinion Research from a comparison of questionnaires answered secretly with others answered by persons who were told that their identity would be known (p. 298):

> "Experiments with secret ballots as compared with oral interviews have shown that respondents are not always frank in stating their opinions. An unpopular opinion or one that reflects in any way upon the prestige of the respondent often gets a higher rating in the secret ballot than in oral replies."[14]

In employees' suggestion programs, likewise, it is common practice to set up a system in which the person making the suggestion does not identify himself but receives a numbered receipt from which he may be identified after the suggestion has been considered. In *How To Conduct A Successful Employees' Suggestion System* (p. 9), Ezra S. Taylor rates anonymity as the most important condition for successful suggestion systems.

Underlying all these practices, anonymous polls, letters to the editor, and the like, is the well-founded belief that anonymity in the expression of views contributes to the free play of ideas and hence to the ultimate search for truth, the same search for truth that the founding fathers sought to foster by the guarantees of the First Amendment.

Conversely, it is apparent that a society in which citizens are not allowed to engage in political activity free of the watchful eye of the state would be intolerable. As George

[14] The original experiments are reported in detail in Cantril, *Gauging Public Opinion* (1944), Chap. V.

Orwell has shown in *Nineteen Eighty-Four*, such prying is consistent only with totalitarianism.

F. Secret Elections in Democracies

Anonymity, secrecy, privacy, however it may be called, thus has a special value in a democratic society. Nowhere is this seen better than in the act that symbolizes the unity of democratic government and its citizens, the election of public officers. It is not too much to say that the degree of freedom that prevails in a country's election is the surest test of the liberty of its citizens. As Mr. Justice Frankfurter pointed out, concurring in *Sweezy* v. *New Hampshire*, 354 U. S. 234, 266 (1957):

> "In the political realm, as in the academic, thought and action are presumptively immune from inquisition by political authority. It cannot require argument that inquiry would be barred to ascertain whether a citizen had voted for one or the other of the two major parties either in a state or national election. Until recently, no difference would have been entertained in regard to inquiries about a voter's affiliations with one of the various so-called third parties that have had their day, or longer, in our political history. This is so, even though adequate protection of secrecy by way of the Australian ballot did not come into use till 1888."

This right of "political privacy" (354 U. S. at 267) deserves protection whether exercised through major parties, through minor parties as in *Sweezy*, or through organizations with political objectives such as petitioner.

G. The Absence of Justification for Compulsory Disclosure

We concede, of course, that where a paramount societal interest is to be served or where injury to the community is to be avoided, the right of anonymity must yield and dis-

closure of identity may constitutionally be compelled. But, as this Court held in *Watkins* v. *U. S.*, *supra*, some justification must be shown. There is, the Court said, no "general power to expose where the predominant result can only be an invasion of the private rights of individuals" (354 U. S. at 200). In the words of Mr. Justice Frankfurter, concurring in *Sweezy* v. *New Hampshire*, *supra*, 354 U. S. at 266-7, the Court must strike a balance between "the right of a citizen to political privacy, as protected by the Fourteenth Amendment, and the right of the State to self-protection."

It is on that basis that the decision in *Bryant* v. *Zimmerman*, 278 U. S. 63 (1928) can be explained (although we do not express approval of that decision). In that case this Court upheld application to the Ku Klux Klan of a New York statute requiring oath-bound organizations, with specified exceptions, to make public the names of their members. The principal basis for the decision was that the legislature could take judicial notice that the Ku Klux Klan operated illegally and had anti-social and anti-democratic objectives.

No such justification exists here. The activities of petitioner are not anti-social or anti-democratic; on the contrary, they are, as we have shown, in furtherance of constitutionally secured rights. The justification accepted as sufficient in *Bryant* v. *Zimmerman* is completely absent here and no other justification has been shown. No justification, we submit, exists, and the order requiring the petitioner to make public its membership records should therefore be reversed.[15]

[15] We have shown above that petitioner has standing to assert the right to freedom of association on behalf of itself and its members. Its standing to assert the right of anonymity is even more clear. The right not to have the state require exposure of the names of the members of an organization is one that must be asserted by the organization. A requirement that it be asserted by the individuals affected would require that the individual surrender the right at the same time that he asserted it. See also *Barrows* v. *Jackson*, 346 U. S. 249 (1953).

Conclusion

The State of Alabama has challenged and attempted to limit the right of American citizens freely to associate. Its actions represent a grave threat to all voluntary associations. Such a challenge demands of this Court unambiguous exercise of its historic powers not only to enforce constitutional guarantees but also to keep open the channels for their assertion.

The undersigned organizations therefore respectfully submit that the decision below should be reversed.

Respectfully submitted.

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